JOURNAL OF THE SENATE

The Senate, sitting as a court for the trial of Article of Impeachment against the Honorable George E. Holt, Circuit Judge for the Eleventh Judicial Circuit of Florida, convened at 9:00 o'clock A. M., pursuant to adjournment on Wednesday, August 14, 1957.

The Chief Justice presiding.

The Managers on the part of the House of Representatives, Honorable Thomas D. Beasley and Honorable Andrew J. Musselman, Jr., and their attorneys, Honorable William D. Hopkins and Honorable Paul Johnson, appeared in the seats provided for them.

The respondent, the Honorable George E. Holt, with his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce and Honorable Glenn E. Summers, appeared in the seats provided for them.

CHIEF JUSTICE TERRELL: Order in Court. The Sergeant-at-Arms will open Court.

THE SERGEANT-AT-ARMS: Hear ye! Hear ye! Hear ye!

All persons are commanded to keep silence, on pain of imprisonment, while the Senate of the State of Florida is sitting for the trial of Article of Impeachment exhibited by the House of Representatives against the Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida.

CHIEF JUSTICE TERRELL: Call the roll, Mr. Secretary.

Whereupon, the Secretary called the roll and the following Senators answered to their names:

Adams	Carraway	Hair	Neblett
Beall	Clarke	Hodges	Pearce
Belser	Connor	Houghton	Pope
Bishop	Davis	Johns	Rawls
Boyd	Dickinson	Johnson	Shands
Brackin	Eaton	Kelly	Stenstrom
Branch	Edwards	Kickliter	Stratton
Cabot	Gautier	Knight	
Carlton	Getzen	Morgan	

SECRETARY DAVIS: 34 present, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: The Senate will arise while Senator Edwards will pray for us.

SENATOR EDWARDS: Our Father, we come to Thee on this morning seeking forgiveness of all our sins. We earnestly solicit Your guidance in every walk of life. We ask that Your will be done.

We thank Thee for all the blessings, and most especially do we thank Thee for the perfect example laid down for us by Christ.

Help us to do Thy will. Provide for us our every need. Bless those who are sick and have trouble in any way, of every kind.

All this we pray in the name of the Father, the Son and the Holy Ghost.

Amen.

By unanimous consent, the reading of the Journal of the proceedings of the Senate, sitting as a Court of Impeachment, for Wednesday, August 14, 1957, was dispensed with.

The Senate daily Journal of Wednesday, August 14, 1957, was corrected and as corrected was approved.

MR. HUNT: Is the Court ready?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: Call Mr. Louis.

Thereupon,

PAUL A. LOUIS,

a witness called and duly sworn in behalf of the Respondent, was examined and testified, in surrebuttal, as follows:

DIRECT EXAMINATION

BY MR. HUNT:

Q Will you please state your name.

A Paul A. Louis.

Q Where do you reside, Mr. Louis?

A In Miami, Florida, 302 Southwest 3rd Street.

Q What is your occupation or profession?

A I am an attorney at law.

Q For what period of time have you practiced law in Miami, Florida?

A Since June of 1950.

Q Where were you educated, Mr. Louis?

A I received my primary education at the public schools of Dade County. I graduated from Miami High School. I have a B.A. degree from Virginia Military Institute at Lexington, Virginia. I graduated from the University of Miami Law School in 1950.

Q Were you born in Miami?

A I was born in Key West, Florida, sir.

Q Is that somewhere in South Florida?

A Yes sir.

Q Mr. Louis, have you either gone to school since you began, or practiced law, continuously, or was your educational program interrupted by war service? If so, state briefly what it was?

A In 1943 I was called up by the Army Air Forces, and I served as a bomber pilot for the 320th Bomb Wing in North Africa, Sardinia and Corsica, as well as Southern France, as a military pilot, B-26.

Q When were you retired from service?

A I was taken off of active duty in September of 1945, approximately. I am still on the Active Reserve.

Q What commission do you hold?

A Captain, sir.

Q Do you know Judge George E. Holt?

A Yes sir.

Q Do you consider yourself a friend of Judge Holt?

A I do, sir.

Q I believe you know me?

A I do. yes sir.

Q Do you know the Hunt family generally?

A I do.

Q On some occasions I believe you and my daughter go to picture shows together, don't you?

A As many times as I can without being run off by you and the rest of the family.

Q Mr. Louis, I will ask you to state whether or not, at my request, some three or four weeks ago you assisted me in making up an analysis of the receivership cases in which a Mr. Kurlan had received appointments either from Judge Holt or other judges?

A That is true, Judge Hunt. I assisted you in that investigation.

Q Did that consist of an examination of each and every one of those court files?

A That is true.

Q Now, on the weekend of Sunday, August 4th, last past, I want you to state to the Senate anything that came to your attention with respect to stray phone calls being made to my home, the report of it to you, and what you did about it. Just start at the beginning and state in your own words.

A About eleven o'clock my law associate, James T. Henderson and I went over to your home.

Q This was on Sunday?

A On Sunday, about eleven o'clock, a.m. When we got there your wife and your daughter, Miss Hunt, informed me that they had received - -

MR. JOHNSON: Excuse me. We object to the hearsay testimony, if the Court please, about what someone else told him.

CHIEF JUSTICE TERRELL: Testify to facts that came under your direct observation, Mr. Louis.

MR. HUNT: I don't believe the witness undertook to state, before Mr. Johnson cut him off, anything about the subject matter of the telephone call. The witness can certainly state what he was told, without stating the substance of any hearsay.

MR. JOHNSON: Well, if somebody told him something, Your Honor, that would certainly be hearsay, unless it is in impeachment of what some witness has already testified here.

MR. HUNT: Your Honor, I am satisfied that, as a matter of common sense and law, this witness will be permitted to state what happened, without detailing hearsay.

CHIEF JUSTICE TERRELL: State what happened, but don't tell any hearsay testimony about what someone else said to you.

THE WITNESS: Yes, Mr. Chief Justice.

BY MR. HUNT:

Q Let me ask you this, Mr. Louis: as a result of the information given you, were you furnished a telephone number which had been left for me to call?

A That is true, Your Honor.

Q State what happened.

A Without going into the substance of what your wife or Miss Hunt told me, they informed me that they had received several telephone calls from a man who refused to give his name. After the ladies told me what the man had said, in the presence of Henderson and Miss Hunt, I called this number that the man had supposedly left with your family.

This was about eleven o'clock. I told this man that I understood that he had called your home several times that morning, trying to get in touch with you or Judge Holt, but that you were unavailable and that I had assisted you in part of the leg work in this case, and that perhaps I could help him.

I identified myself and I asked him who he was. He at first said, "Well, it doesn't make any difference," and then he said, "Well, I suppose that you can call my - - you have my number so you wouldn't have any trouble finding out my name," so he said, "My Name is Bunten."

I said, "Based upon what - - " Based upon what your daughter had told me, I said, "Well, Mr. Bunten, I understand that you are trying to get in touch with Judge Hunt or Judge Holt." I said, "Judge Holt is in Tallahassee." He said, "Yes. I had to get in touch with him immediately, because there is an investigator from the Senate who has contacted me." I said, "Is his name Roper?" He said, "That is correct."

Q He said, "an investigator from the Senate?"

A That is correct.

Q Go ahead.

A Based upon what Miss Hunt had told me, I said, "Well, listen, Mr. Bunten. I understand that this man is intimidating you."

He said, "No, he is not intimidating me. In fact, he told me I would be well taken care of."

I said, "What do you mean? Do you mean expenses? "

He says, "No, I mean that he said he was going to take - - -" I think "I was going to be well taken care of."

He made the distinction, which I inquired about. He said that he had - - that he did not know you but that he knew the Holts; that he had vital information that this investigator was coming to his home at approximately one o'clock and that - -

Q Was that the same day?

A That is right, sir. He said that his information that he had was very detrimental to Judge Holt and that he had to contact Judge Holt or you before the investigator came out there, because he had to know which way to go.

Q He had to know which way to go?

A That is correct. Well, at that point I told him that I would try to get in touch with you and that I would call him back.

Q Did you tell him, Mr. Louis, where I was?

A Not at that time, Judge.

Q Very well.

A So that was the extent of the first conversation, as I remember it.

Q What happened next?

A Then Henderson and your daughter and I went downtown to our law offices. At approximately twelve o'clock I called the number that this man who identified himself as Mr. Bunten had given me. The same voice answered and he said, "I can't talk to you now." He says, "I'll call you later."

I said, "Is someone there - -" this is as I recall it from memory. I said, "Is someone there?"

He said, "Yes." He said, "Leave me your number," and I left him my number. At that time I had an Audograph Recorder in operation.

Q Is that similar to this contraption here (pointing to Gray Audograph)?

A That's the same contraption, yes sir. Then I would say in approximately fifteen minutes, while Henderson, Miss Hunt and myself were in my office, a call came in. This was Sunday, about twelve-fifteen - - and this same voice that I had been talking to, who identified himself as Mr. Bunten - - we had another conversation. At that time I asked him, I said, "Well, was this chap, was this investigator at your home when I called?" He said, "That's correct."

Q That is Mr. Roper?

A He stated that it was Mr. Roper. That entire conversation was recorded.

Q Very well. Now what happened after that, if anything?

A After that I went about my ordinary business, and contacted you, I would say, about five o'clock that evening.

Q Sunday afternoon?

A That is right; and I related to you the circumstances involving this conversation and the call with Bunten. You told me that you didn't want to have anything to do with it, that - -

MR. JOHNSON: We object, Your Honor, to the hearsay conversation between them.

THE WITNESS: All right, sir.

CHIEF JUSTICE TERRELL: You know the hearsay rule, Mr. Witness, being an attorney. You will conform to it. Don't testify to what somebody else told you.

MR. HUNT: I can take the stand after a while and testify, if it is required.

BY MR. HUNT:

Q Go ahead, Mr. Louis.

A I went, then, the following Monday morning, when my secretary came in - - gave her the record, the disks, and had her transcribe them, and I sent the disk and the transcription to the Duval Hotel - - care of the Duval Hotel, to the Honorable Richard Hunt.

Q Go ahead.

A That evening I received messages that Bunten was trying to contact me. I didn't return them.

Q That was Monday evening?

A That's correct. I did not return the call. On Tuesday of that week, when I came to work that morning about nine o'clock in the morning, I received a telephone call from Mr. Bunten. That telephone call was recorded. I then had my secretary transcribe the record. I mailed both the record and the transcription to you at the Duval Hotel.

Q Would you recognize those records if I were to show them to you, Mr. Louis?

A I don't know whether I marked them or my secretary did, Judge, but I could identify them in other ways, of course.

MR. HUNT: Let me see them.

Whereupon Secretary Davis produced the two Audograph records previously referred to in the course of this trial.

Q I will ask you to examine these two envelopes, marked in red pencil "18" and "19," and their contents, and state whether or not you can positively identify those as being the records which you had taken of the conversations you have detailed to the Senate.

A This record, which came out of the envelope numbered "18," with, written in red crayon, "Button, August 4," is the writing of my secretary. Actually, the only way I could make a positive identification that this is what is indicated on the record is, of course, to hear just the first part of the conversation on the machine.

This one I can identify as my secretary's handwriting, August 4th. Of course, I can't read what is on the sound track.

Q I understand. You would request that the first few words of the record be played back to you so you could recognize it?

A Yes sir.

Q For positive identification?

A Yes sir. That is how I can make positive identification.

MR. HUNT: Mr. Davis, could we arrange to have the first portion of this played?

SECRETARY DAVIS: Yes, sir.

BY MR. HUNT:

Q Is this first one the Sunday conversation?

A Yes sir, August 4th. That is indicated on the record.

(At this point the Court Reporter placed the first of said Audograph recordings upon an Audograph machine, and played a portion thereof to the witness.)

THE WITNESS: That is the record.

Q Is that your voice?

A Yes sir, Judge.

Q That is your voice?

A That's my voice and that is the record of the transcription between Bunten and myself on Sunday, August 4th.

MR. HUNT: Put it in the envelope.

If the Court please, we offer in evidence at this time the envelope and the enclosed record bearing the red pencil inscription "18."

MR. JOHNSON: If the Court please, before we announce our decision about any objection, we would like to see a copy which Judge Hunt has of his transcript. I think it is pertinent at this time.

MR. HUNT: I don't have a copy to furnish you now. I am offering the record in evidence, which this witness has identified. If counsel wants to hear it again he can have it played.

MR. JOHNSON: Your Honor please, I understood yesterday Judge Hunt to say that he was reading from a transcript of the record, and also that this witness testified that he made a transcript of this record or had a transcription made. If he does have a transcript of this record I think that we should be furnished a transcription of it, of all the records that he has had played before the Senate.

MR. HUNT: Your Honor, I would be glad to accommodate the honorable counsel, but I have one, which I need in the course of my examination. When I get through I will be glad to will it to him. He can have it.

MR. JOHNSON: Your Honor, suppose that the Court reserve its ruling on the admission of these records until after we have had a chance to examine the transcript.

CHIEF JUSTICE TERRELL: Very well.

BY MR. HUNT:

Q Now, Mr. Louis, you have examined the record in the number 19 envelope, have you?

A Yes sir. This would appear here to be my handwriting. Of course, this is my secretary's handwriting on the envelope, but, if I may, I would request that I hear the first part of the conversation, which indicates that this was the Tuesday, August 6, conversation.

MR. HUNT: Very well. We will ask that it be played.

Whereupon the Court Reporter placed said Audograph recording upon an Audograph machine and played to the witness a few words of the recording.

THE WITNESS: That is the conversation, Your Honor. That is the record, Judge.

MR. HUNT: We offer in evidence the record just played, which is enclosed in an envelope bearing the red pencil inscription "19."

CHIEF JUSTICE TERRELL: The same ruling as to the first one.

BY MR. HUNT:

Q Mr. Louis, do you have a copy of the typewritten transcription of those records?

A I do, sir.

Q May I have it?

A (Handing a document to Mr. Hunt) I hand you the Sunday transcription and the Tuesday transcription.

MR. HUNT: Thank you, sir; and I hand these to Mr. Johnson.

Take the witness.

MR. JOHNSON: Will the Court indulge us a few moments until we have a chance to look at these transcripts?

CHIEF JUSTICE TERRELL: Yes.

MR. HUNT: I would like to ask the witness if he was Assistant State Attorney under Mr. George Brautigam for a number of years.

THE WITNESS: Yes, sir, I was.

MR. HUNT: You were?

THE WITNESS: Yes. I served as Assistant State Attorney from January 5, 1955, to January 5, 1957 - - as Assistant State Attorney.

CHIEF JUSTICE TERRELL: How much time do you want to look through those?

MR. HUNT: We might as well take a five or ten minute recess, Your Honor - - whatever time they want.

CHIEF JUSTICE TERRELL: I will ask you how much time you want, Mr. Johnson.

MR. JOHNSON: Five minutes, Your Honor.

SENATOR RAWLS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Rawls.

SENATOR RAWLS: I move that we have a five-minute recess.

CHIEF JUSTICE TERRELL: That will be the order.

Whereupon, at 9:28 a.m., the Senate stood in recess until 9:50 o'clock a.m.

MR. JOHNSON: Mr. Chief Justice, the Managers are ready to proceed at any time the Court is ready. Is Your Honor ready to proceed?

CHIEF JUSTICE TERRELL: Court will come to order. The Chair declares a quorum present.

MR. JOHNSON: Has the Respondent tendered this witness for cross examination?

MR. HUNT: Yes.

CROSS EXAMINATION

BY MR. JOHNSON:

Q Mr. Louis, how long did you say you had been practicing law, sir?

A Since approximately June, 1950, upon my graduation from law school.

Q Were both of these telephone calls that you have referred to made from your law office?

A That is correct, sir.

Q At the time you tapped the telephone conversations did you warn the party on the other end of the conversation that the conversation was tapped?

A I did not. If you consider that a tap, I did not.

Q Well, what do you consider it, sir, if it is not a tap?

A I consider a tap when you go into someone's private line and tap onto them, without each party knowing about it, where you don't have the telephone. Where you own the telephone yourself it's different. Where you don't own the telephone yourself and it is not in your name - - in other words, where you are listening in on someone else's conversation other than the person to whom it has been directed to.

Q Did you tap the Audograph onto this telephone line in some fashion?

A Of course, we are just talking about words. My machine is wired into the telephone.

Q In other words, you have a permanent tap on your telephone. Is that right?

A That is correct.

Q Do you record many conversations that you have with other attorneys and other persons that you talk to?

A I do. When they are important enough that I want to perpetuate the truth, I do so.

Q Do you have any warning beep on that machine, Mr. Louis?

A I do not.

Q Are you aware that the regulations of the Federal Communications Commission provide against such practices as you have described?

A No. I believe that that - -

Q Sir?

A I am trying to answer you, sir. My answer is that I am not aware of that, sir.

Q You have no knowledge of any regulations contrary to tapping telephones?

MR. HUNT: Your Honor please, let the gentleman produce the regulation he is talking about. He will find that he is in error. I object to the further interrogation of the witness along those lines.

CHIEF JUSTICE TERRELL: The witness has testified, I believe, that he didn't know anything about the regulations.

BY MR. JOHNSON:

Q But your statement is that you did not warn the party on the other end of the line that his conversation was being tapped. Is that right?

A In this particular conversation with Mr. Bunten or other people who I might record a conversation with?

Q Let's talk about this particular conversation first.

A I did not advise him in any way whatsoever that what he was saying was being taken down by a machine.

Q Mr. Louis, had you ever talked to the man that gave you the name of Bunten before the conversation which you tapped?

A I don't understand your question.

Q This man who told you his name was Bunten or Button - - had you ever talked to him on the telephone prior to tapping this conversation?

A Never in my life that I know of.

Q Well, could you positively testify, under oath, that the Button or Bunten whom you talked to on the telephone is the same Button or Bunten who testified here in this Court?

A I have never seen that gentleman, no sir. The only relationship I have ever had with this man who identified himself as Bunten and who gave me the telephone number that I have already stated is completely within those four telephone conversations which I have already testified to.

Q Mr. Louis, as a matter of fact, this man who talked to you primarily was concerned with not having to go to Tallahassee to testify. Is that not right?

A I didn't understand it that way, no sir, definitely not.

Q Didn't this man who gave his name as Button or Bunten tell you at all times that his testimony would be extremely detrimental to Judge Holt and that his testimony would prove that Judge Holt was stone drunk?

A Mr. Johnson, I think the records speak best for themselves, but my interpretation of what this man says, when you are asking me the gist of this conversation, was that this man said, "I can go either way, depending upon certain circumstances, period."

Q Let me read from the transcript that you have furnished to me and see if your recollection is in accordance with what you have handed me, typed out.

Question by you:

"This is the first time anybody ever contacted you in this whole case, huh?"

Answer by Button or Bunten:

"Yes. I told Hunt's daughter the information that I - - and I told Hunt's daughter I had had it - - it had been in my possession and in my memory all the time, but I didn't - - I saw no reason to get involved in it myself. What I would testify if I was subpoenaed and told the truth would be very detrimental."

Now, is that what you recall him telling you?

A I believe that's part of the conversation of Sunday. Are you reading from the conversation of Sunday?

Q I am reading from August 4th.

A Yes sir, that is part of the conversation.

Q And didn't you testify further that you said, "What is that? What?" And he said:

"That he was absolutely stone drunk. He couldn't walk. This man and Judge Prunty carried him to the station wagon and he slumped. He couldn't even sit on the seat; he fell on the floor."

Do you remember him telling you that over the telephone?

A I certainly do.

Q And do you remember you saying this:

"Boy, that's different than Judge Prunty's testimony up there, isn't it?"

A Yes.

Q Do you remember you saying that?

A Absolutely.

Q And he said this:

"Yes, it is. As I said, I have no axe to grind either way. If I'm going to be driven into it, why, I didn't know which way I'd go."

A That's right. Yes sir.

Q Now, concerning expenses, did you ask this question:

"What did he say? Did he say anything about taking care of you as far as expenses up there, or anything like that?"

Do you recall that?

A Yes sir. Mr. Johnson, I remember it all. I don't have the transcript you are reading from but I submitted all of it.

Q Did he say this:

"Well, he definitely said that everything would be taken care of and I would be well taken care of."

Then you said:

"Did he indicate any amounts, or anything?"

Then he said:

"No. He gave me the card with the Tallahassee number on it, and his hotel number there, and said that he would notify me in the morning and if I - - if my memory got any better, and if I wanted to get in touch with him I could reach him; that he would stop by or phone me in the morning before he left. He's taking the morning flight out of here."

Do you remember that being said?

A Yes sir, I do.

Q At any time in this conversation with this man whose name he gave you as Button - - did he ever tell you that Mr. Beasley or Mr. Musselman or Mr. Roper or myself or Mr. Hopkins were paying him in order to procure him to testify falsely in this case?

A Mr. Johnson, of course the conversations - - three of the conversations are on record and they speak for themselves. The first conversation that I have related to you was not recorded. This man never mentioned your name, Mr. Hopkins, Mr. Beasley or Mr. Musselman, at any time. He did mention Roper's name. The implication, and by his words I took it to mean that if his memory improved, as he said there, that he would be taken care of well, and there was a distinction between expenses and being well taken care of.

Q As a matter of fact, when he was discussing memory he was discussing the names of the other boys who were there at the party, wasn't he?

A No, he wasn't - - only partially.

Q You say "only partially?"

A Yes sir. Again I say the record speaks for itself. His idea was this, and this was the gist of the conversation: "If I go one way I'm the only man that knows the names of any of the possible witnesses. My memory is not too good right now. Mr. Roper, the investigator, told me that if my memory improved, to get in touch with him. However, I'm the only living soul that knows who was there, and that's why, boy, I've got to get in touch with Judge Hunt immediately, to see which way I want to go."

Q In other words, he didn't want to go up to Tallahassee. Is that it? He wanted to go someplace else, like Mr. Kurlan, who went to Casablanca, or Mr. Langer who went out of the country. Is that correct?

A Does that call for an answer, sir?

MR. HUNT: Counsel is just making a pre-argument of his case. I have no objection.

BY MR. JOHNSON:

Q Didn't you tell him repeatedly that if he was subpoenaed he had no choice, that he had to go to Tallahassee?

A I certainly did.

Q And wasn't that foremost in his mind about having to go to Tallahassee and testify?

A Not in my opinion. In my opinion, money was foremost in this man's mind, as I believe the records themselves will show this honorable body.

Q That is your conclusion, Mr. Louis?

A Based on those records, that is my opinion.

Q Do you have any other tapped records other than those that you have introduced here?

A In reference to this particular man?

Q Yes.

A I do not.

Q Isn't it true that at all times during his conversation with you he maintained, as he did on this record of Sunday, August 4th, that Judge Holt was stone drunk and that his testimony would conflict with Judge Prunty's and that he didn't want to get involved in this case?

A Of course, I'm not going to take up your time - - when you say tapped I am taking it the way you mean it and letting it go at that. Now, the way I understood it, he was saying, "If I go up there, if I don't get in touch - -"

Q Answer the question.

MR. HUNT: Let him answer the question, Mr. Johnson.

CHIEF JUSTICE TERRELL: Let the witness do the answering, and counsel will keep quiet while he answers.

A My interpretation was, "If I don't get in touch with Judge Holt - - I mean Judge Hunt - - I am going to testify that Judge Holt was stone drunk, but if I get in touch with them and my memory may fail me, I may not testify that way and I may not bring any other witnesses to back that up."

Q May I read you a quote and see if it refreshes your recollection any?

A Yes sir.

Q (Reading) "Yes, I told Hunt's daughter the information that I - - and I told Hunt's daughter that I had it - - it had been in my possession and in my memory all the time, but I didn't - - I saw no reason to get involved in it myself. What I would testify if I was subpoenaed and told the truth would be very detrimental."

A That is true. Yes, that is true. That is exactly what he said, and I will add - -

Q Well, will you just answer the question and not volunteer any information?

A Well, you are taking it out of context, Counsel. It is not a fair question, when you are trying to say that was the only thing the man said.

Q No, I didn't say that was the only thing the man said. That's all we have.

REDIRECT EXAMINATION

BY MR. HUNT:

Q The last question was, if he was subpoenaed and told the truth he would say it. Is that right?

A That is what he said.

MR. HUNT: No further questions. Come down.

MR. JOHNSON: No questions.

THE WITNESS: May I be excused?

MR. HUNT: Yes. Thank you very much.

(Witness excused from stand)

SENATOR BRACKIN: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Brackin.

SENATOR BRACKIN: Last week the prosecution, I believe, called a recess here and stated that they had an attorney in Boston, Massachusetts, whose name I believe was Mr. Meserve, and they got this Senate to agree to vote him all immunity to the laws of Florida and to bring him into this state to testify.

Now, I feel that the members of this Court and the people of this state, who paid the bill to have that man brought down here, have a right to hear his testimony, and I believe that it should be presented to this Court, in order to clear up what phase of that part of this trial that led us to believe that he knew something that we ought to know.

MR. BEASLEY: Mr. Chief Justice, in order that the members of the Court may know about the man from Massachusetts, he was summoned down here and we did ask immunity and we obtained immunity for him.

After he came down we were not so sure that all his testimony would be in rebuttal, that it might open a new field where this case would be prolonged for several days, so, in the interests of trying to get this case over with, we announced yesterday that we did not desire to put this witness on the witness stand, but that he was present; and yesterday afternoon, after we rested our case and finished our testimony, we excused Mr. Meserve and allowed him to return to Massachusetts.

SENATOR BRACKIN: I still maintain, Mr. Chief Justice, that this Court is entitled to know what he supposedly knew, and that it should be brought to the attention of this Court.

SENATOR BRANCH: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Branch.

SENATOR BRANCH: I would like to ask the Manager, Mr. Beasley, what that junket cost this State Senate and the taxpayers of the State of Florida, to bring that man to Florida, and to keep him here several days and then let him return to Massachusetts or wherever he came from.

MR. BEASLEY: I can't give you the exact figure, but, as I understand it, he was here one day and it cost eleven dollars for his per diem and then his mileage from Boston and back.

SENATOR BRANCH: I would like to have that during this trial, brought out. I would like for that to be made a matter of record here. I would like for the people to know it.

MR. BEASLEY: We will be glad to make it a matter of record now. We paid him out of our revolving fund the sum of ten cents a mile to and from Boston, which we figured was 1310 miles. That is a matter of simple arithmetic, and then he was paid one day by the Senate. We did no more in that case than the Respondent did in bringing a witness here from - - I believe someplace in North Dakota, although I think that if that witness received a fee the Respondent paid it.

But the State can only bring witnesses here and examine them and, if they find that their testimony is not material or not in rebuttal of testimony given during the case, the direct case, and if we elect not to use them, then I think that that is something that the prosecution should be concerned with.

We were only trying to bring to the Senate via Mr. Meserve testimony as to fees charged or allowed in the case in Massachusetts, the Dowling case. We found that that would open the gate to a great length of testimony, so, therefore, we decided yesterday, after the Chairman of the Rules Committee announced that if we didn't bring the case to a close the Senate would - - we decided then, for the sake of harmony and for the sake of getting through with this case, that we would bring the case to a close without opening up any new testimony.

SENATOR BRACKIN: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Brackin.

SENATOR BRACKIN: Let me ask the prosecution a question. Mr. Beasley, if that man had some information that was so important that he should be granted immunity from the laws of Florida - - something that we didn't grant to citizens of this state - - and if we paid several hundred dollars to bring him down here, it seems to me that the prosecution should have determined before hand the amount of information and the kind of information that he had and, if it was as important as was stated by the prosecution, then this Senate should have had the advantage of that information.

SENATOR EATON: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Eaton.

SENATOR EATON: May I ask a question of both sides?

CHIEF JUSTICE TERRELL: Yes.

SENATOR EATON: Has the Respondent rested his case?

MR. HUNT: Yes, sir.

SENATOR EATON: Have the Managers rested their case?

MR. BEASLEY: Yes, sir.

SENATOR EATON: Mr. Chief Justice, I move you that we proceed with final argument.

(The motion was seconded from the floor.)

CHIEF JUSTICE TERRELL: You have heard the motion, gentlemen. All in favor of it let it be known by saying "aye."

(Those in favor of the motion so voted.)

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes against the motion.)

MR. HUNT: Mr. Chief Justice, I would like, in view of Mr. Beasley's statement about a witness for the Respondent who came here from the oil fields of Wyoming - - I would like for the Senate to know that that gentleman paid every penny of his own expenses.

MR. SUMMERS: Except eleven dollars.

MR. BEASLEY: Yes, we figured he did, Judge.

MR. HUNT: You didn't say he did.

CHIEF JUSTICE TERRELL: The Court is ready for the argument, gentlemen.

MR. MUSSELMAN: May it please the Court, if we could

have approximately five minutes before we commence our arguments - - we feel like we need that in view of what has been testified here this morning.

CHIEF JUSTICE TERRELL: Without objection, the request is granted. The Senate will have a five-minute recess.

Whereupon, beginning at 10:07 a.m. the Senate stood in recess until 10:20 a.m.

CHIEF JUSTICE TERRELL: Are you ready? Order in Court. The Chair finds all members of the Court present.

MR. JOHNSON: Mr. Chief Justice and Members of the Senate of the State of Florida, sitting as a Court of Impeachment:

At the inception of our closing remarks the Managers for the House of Representatives and their counsel want first to express our appreciation and our congratulations to the Senate for the judicious, dignified approach to this case which the Senate has displayed during the entire proceeding.

I will not begin my remarks by exhorting you to do your duty, because I feel confident that every Senator here will do his duty in this cause as he conscientiously sees fit, without bias and without any other consideration other than the evidence which has been presented before the Senate, sitting as a Court of Impeachment.

As has been said earlier, this is a proceeding rich in historical significance, because this is the first time in the history of the State of Florida that any impeachment proceeding has come to this point, and the entire State of Florida is looking to you in this trial to do justice that will reflect honor to both the Senate, the State judiciary, and the people of the State of Florida. You are all fully aware of the tremendous responsibility which is yours, because here, at long last, the Respondent has finally achieved the opportunity to be heard and to present his defenses, if any he has, to the accusations which have been made against him.

You have had the opportunity to personally listen to him, listen to him explain away as best he might these allegations which have been made against him. You have heard the evidence, and upon your shoulders rests a burden which you did not seek, a burden which, perhaps, if you could have avoided it, you would have gladly relinquished, but, nevertheless, a burden which is yours by virtue of your position as state senators of the State of Florida.

I would like to discuss with you the evidence. I would like to discuss with you the facts that have been presented before you, to determine if the House of Representatives of the State of Florida was justified in their act of impeaching Judge Holt. At this very moment Judge George E. Holt stands impeached by the House of Representatives of the State of Florida, and you now have the burden, the duty, and obligation, of determining, upon your oaths as judges of this Court of Impeachment, whether the House of Representatives was justified in the action they took after the many days of testimony and many hours of work that their Committee performed and after the deliberation of the entire House of Representatives of the State of Florida.

Actually, this cause is somewhat unique in many respects. One is that there is not a series of Articles of Impeachment but only one Article, and that Article is this:

"The reasonable consequences of the actions and conduct of George E. Holt hereunder specified and indicated in this Article since he became Judge of said Court, as an individual, or as said Judge, or both, has been such as to bring his Court into scandal and disrepute, to the prejudice of said Court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such Judge."

And then the House of Representatives has outlined a course of conduct, a series of events, which in their considered judgment, are sufficient to render Judge Holt unfit to continue to serve as Circuit Judge of the largest and most powerful circuit in the State of Florida.

I submit to you gentlemen, sitting as a Court of Impeachment, that the Managers have proved, conclusively, overwhelmingly, that Judge Holt, by his actions, by his conduct both on and off the bench, is unworthy to bear the title and position of Circuit Judge of the Eleventh Judicial Circuit, and is unworthy to have held the position of Senior Circuit Judge of Dade County - - one of the most powerful positions in the whole State of Florida.

During the course of our presentation we will not attempt to sway or move you by any extraneous matters, but ask that you be guided only by the facts which have been clearly shown to the people of the State of Florida during these proceedings.

I would like to review the Prosecution's case, much in the manner in which it was presented to you, so that you might follow it more easily.

Let's take up the Gersten matter first of all. Here we have a situation where a Circuit Judge requests a lawyer who is practicing before him to loan him money to purchase a car. Now, what lawyer who knows that his fees, and the outcome of his cases, are dependent upon the whim of this Judge - - and certainly the evidence is replete with instances in which, by his whim, Judge Holt made decisions which resulted in injustice being done - - what lawyer who is dependent upon the whim of the Judge, is going to say, "Judge, I won't lend you the money."?

Gersten did the only thing he could do. He said, "Judge, I will lend you the money."

And now we go into a very confused situation. A note was given for $1,785. Judge Holt testified that he borrowed $2,185. The purchase price of the car was $2,230. We have testimony from Judge Holt and Mr. Gersten that they had arrived at the exact figure to be loaned prior to going to Christopher Motors; but Mr. Holmes, who has no interest in this matter, has no axe to grind whatsoever, testifies that it was not until after Judge Holt and Mr. Gersten came down to Christopher Motors that the amount of the purchase price was known.

How, then, could they have determined back in Judge Holt's office prior to going to Christopher Motors, the exact amount of the note, unless the note had been given subsequently and at a much later date? Mr. Gersten said that he had never loaned such an amount of money before to anyone. He testified that that was the largest sum of money he had ever loaned, and he further testified that, in over a year and a half from the date of the loan - - and there is no evidence of any agreement or understanding of a repayment date - - there had never been an offer or a demand to repay that loan of $2,185.

And concerning the note for $1,785, it was not until after there was public dissemination and criticism of Judge Holt for his action in borrowing the money, contrary to the Canons of Ethics relating to Judges, that he ever made any payment on that $1,785 note, and then it was not until after the House of Representatives had passed a resolution calling for an investigation to determine if Judge Holt should be impeached, that the remainder of that loan was paid by Judge Holt to Mr. Gersten.

We know this: That within two months after the loan was made Judge Holt appointed Mr. Gersten as guardian ad litem to an estate that amounted to three million dollars. However, the evidence shows that, due to the circumstances that developed, his services as guardian ad litem were terminated at an early date and he received only a thousand-dollar fee. That is the way they testified - - "only a thousand dollars." However, to me that seems to be a great deal of money.

We also know that there were many other occasions on which, according to Mr. Gersten's testimony, he received judicial appointments.

Gentlemen, there is a reason for these Canons of Ethics. We have Canons of Ethics governing lawyers in this State, and if a lawyer gets out of line and willfully violates the Canons of Ethics, the Board of Governors of the Bar can remove him from practice, in the best interests of our State and of our Bar. However, the Supreme Court has ruled that if a Judge, who is held to a much higher responsibility, to a much higher degree of duty, than a lawyer at the Bar, if he violates the code of ethics the Bar cannot remove him, and no one can discipline him except the Senate of the State of Florida; and here we find time after time, willful, flagrant

violation of the code of ethics and violations of common good practice by a Judge in dealing with men who look to him for decisions in their cases.

But Judge Holt comes here and says there is nothing wrong in borrowing money from this attorney who practices before his Court. It is just a coincidence that within two months after the borrowing of the money, without security, without any repayment date, that he appointed him as guardian ad litem to a $3,000,000 estate, the Vose Babcock estate.

We next have the Flame Restaurant. In the Flame Restaurant matter we know that Judge Holt, without notice, appointed a man as receiver of a restaurant that was a going concern, of a restaurant that was making money, a restaurant that was entirely solvent, and one of the finer eating places of the city of Miami; without notice appointed a receiver on the petition of a man who had only $350 cash invested in this restaurant, plus a credit of some $3,500 to $5,000 for work that he had performed; a receiver of a restaurant in which the defendants had $70,000 invested.

And who did he appoint? He appointed Mr. Kurlan, the man with whom he had taken the trip to Europe, a man who, in a period of a year and a half, received, as the records will show in this case, over $26,000 in receivership fees, awarded by Judge Holt himself; a man for whose welfare he was so concerned, this man with whom he went to Europe, that Judge Holt defied an order of the Supreme Court of the State of Florida requiring that certain monies taken by the receiver as fees be returned - - the Supreme Court had ordered that portion of Judge Holt's order quashed - - but Judge Holt, in a lengthy order which he took at least half an hour to read while he was on the witness stand, refused to comply with the mandate of the Supreme Court of the State of Florida and refused to require Mr. Kurlan to return that money.

In that case it took three trips to the Supreme Court before, finally, the defendants were able to get back the restaurant which was rightfully theirs and, in the final analysis, by the actions of Judge Holt, contrary, as the Supreme Court of the State of Florida said, to the facts of the case and the law of the case, it cost the defendants $7,500 for twenty-two days, and Judge Holt's friend, Mr. Kurlan, received $100 a day, in addition to his two assistants who received, respectively, $100 a week and $150 a week.

I would like to discuss another instance in which people with whom Judge Holt has been closely associated have profited greatly by their association.

In the Articles of Impeachment one of the connected instances by which you are asked to impeach and convict Judge Holt is that he permitted his personal relationships with individuals to unduly and improperly influence his official appointments. We have a situation on the Haiti trip in which there was pending in Judge Holt's division a case involving $81,000, a case to determine whether Mr. Weesner would retain or would have to repay $81,000. During the pendency of that case, after the suit had been filed, Judge Holt and Judge Crawford and their wives and the attorney in the case, Mr. Perkins, arranged for a trip to Haiti. How did they make the arrangements? Well, they asked Mr. Weesner to purchase the airline tickets for them and Mr. Weesner was able to save them twenty percent.

Where did they stay? They stayed at Mr. Weesner's hotel.

Now, there is much conflict about how the hotel bill was paid, but we do know this: that Mr. Weesner testified that several months after the party had left the hotel he requested Mr. Perkins to pay his bill, and Mr. Perkins says, "I have not yet received my money from Judge Holt and Judge Crawford." That is Mr. Weesner's own testimony before you gentlemen

We also know this - - and this is uncontradicted - - that it was not until December of the same year in the summer of which they went to Haiti - - it was not until December that the hotel bill was paid, and then by a setoff against fees that were charged by Mr. Perkins to Mr. Weesner. Mr. Weesner admitted that there was great elasticity in fees and that he had no way of knowing if the fees concerning Mr. Perkins' representation in that suit were raised in order to pay the hotel bill.

We submit to this Senate that that is in direct contradiction to the Canons of Ethics governing Judges of this State. A Judge, much like Caesar's wife, must be above suspicion; and if it is true that Judge Holt did not know of the case prior to going on the trip, when he returned why did he not do as Judge Cannon did in one of the cases that is recited here - - recuse himself and say, "No, I cannot be fair, because I have accepted Mr. Weesner's hospitality, I allowed him to purchase my plane tickets, I stayed at his hotel, we even discussed flying down in his airplane."?

Judge Crawford stated that the moral question of flying down in Mr. Weesner's airplane did not come into his mind because he did not know that a suit was pending at the time.

But I say to you gentlemen that, knowing all that, at the time the case was heard, was it not incumbent upon Judge Holt to recuse himself and say, "I would rather not hear this case"?

There are many lawyers in this Senate. Would you feel exactly right about a case in which you knew that opposing counsel had been on an extended trip with the Judge before whom you were trying the case, that the opposing party had done courtesies for the Judge? Regardless of how impartial the Judge might be in the case, there would always linger in your mind the feeling that the Judge was unduly influenced, particularly in this case, when the Judge ruled against Mr. Weesner's opponent and awarded and determined that Weesner was entitled to retain the $81,000. We submit that Judge Holt's actions in that case caused people to lose confidence and respect for the dignity and integrity of his Court.

Now I would like to discuss next the Stengel case To my way of thinking, that is the most outrageous case that has yet been discussed in this entire proceeding. We have a situation there in which the Judge awarded an appointment to Mr. Heller, the same Mr. Heller with whom he took a trip to Harvard for some Harvard commencement exercises, along with Judge Prunty. He appoints Heller as curator to protect the interests of this old lady, to keep the estate from being dissipated by designing persons; but, as the record reveals, there was no one that kept Mr. Heller from dissipating the estate, and Judge Holt, in his orders, repeatedly went along with Mr. Heller's contentions and allowed the estate to be stripped, piece of property by piece of property and dollar by dollar, until, in the final analysis, as we have set forth in our Bill of Particulars, the Judge not only awarded fees far above the amount of property that was located in Florida, but he also awarded a deficiency decree and judgment and allowed the curator and his lawyer to go into another state and take assets of the old lady from another state.

I don't believe that was the purpose of our curator statute. I don't believe that that was the intent of the Legislature. Curators are appointed to help preserve, to assist the Court in preserving an estate, and when the Court. in conjunction with curators, permits an estate to be dissipated and stripped of all its assets, I say that that is an outrageous abuse of judicial discretion and is highly reprehensible.

In the Stengel estate the only response that they have made and the only explanation that the Respondent has made to this dissipation of the assets, has been to repeatedly say that the son of the old lady was a homosexual. As reprehensible as that is, as unfortunate as that situation was, that certainly was not an excuse, that certainly was not a proper basis for stripping that estate completely and awarding a deficiency decree against the lady's property in another jurisdiction.

Next we have a very involved, complicated matter, concerning a man very close to Judge Holt, and that was the Whiteside transactions. We have here a gentleman, Mr. Whiteside, who was the law partner of Judge Prunty prior to Prunty's going on the Bench - - apparently a very close friend of Judge Holt, a man who had litigation pending before Judge Holt involving tremendous sums of money - - the People's Water and Gas Company vs. City of Miami Beach. During the course of that litigation, at a time when Judge Holt had under advisement a motion for an order fixing and determining costs and, incidentally, a motion at the hearing on which Mr. Whiteside had been the only witness who testified as to the reasonableness of his fees - - while the Judge had that under advisement Mr. Whiteside made a payment to Judge Holt in a sum of money over a thousand

dollars, which was presumably as a distributive share of a business venture which Mr. Whiteside described as a very speculative business venture.

Let's look back at the facts. Was that a speculative business venture? Mr. Whiteside testified it was, but the Respondent brought here a Mr. Cloeter, and Mr. Cloeter's uncontradicted testimony was that he disbursed money to Mr. Whiteside on April 11th; that some two weeks to sixty days prior to disbursing that money Mr. Whiteside and Mr. Cloeter had sold a lot of cylinders and that they had reason to believe and that they felt that there would be other sales forthcoming from the same company; so sixty days to two weeks prior to the date that Judge Holt and Mr. Whiteside entered into this endeavor that they say was speculative the cylinders had already been sold, or a considerable part of them had been sold, so there was no speculative aspect of it. They had already found a buyer, they already felt that they would be able to have further sales.

I asked Mr Whiteside - - I said, "Mr. Whiteside, did you need Judge Holt's money?" He said, "No, sir." Mr. Whiteside has testified to the effect that he is a man of means. We have seen his income. There was no need of the Judge giving him the money in order to transact the deal. Mr. Whiteside was merely letting the Judge in on an extremely lucrative deal, which was not speculative at all.

Now, gentlemen, you might ask "What is the matter with that?" Maybe you would like to be in on a transaction of that sort. We have a situation here where we are not dealing with a Justice of the Peace, we are not dealing with a constable, we are not dealing even with a member of the Legislature, if you please, but we are dealing with a Judge, a man who, when he assumes the robe of office, a man who when he goes on the Bench, assumes certain strict obligations concerning propriety; a man who must be removed completely from any suggestion of impropriety, from any suggestion of prejudice or bias; a man who, in these equity cases that we have heard so much about, is the sole and final judge of both the law and the facts; a man whose slightest whim determines the outcome of the case. Many times, as you lawyers know, once a chancellor has made his ruling, the Supreme Court is very reluctant, reluctant indeed, to upset the ruling of the chancellor.

So I say to you that when a Judge enters into lucrative business transactions with an attorney who is then practicing before his Court, who then has litigation pending before his Court, and prior to the ruling of the Court upon that litigation - - I say to you that that is reprehensible conduct and is certainly in violation of the code of ethics which is contained in the Bill of Particulars.

Another case with which we consumed a great deal of time was the Dowling case. I could stand here all morning and discuss that case. Counsel for the Respondent could stand here all morning and discuss that case, and still not complete it; but there are certain facts, there are certain important aspects of that case, that stand out in our minds, and that is this:

By the testimony of their own witness, Mr. Wasserman, at the time the curatorship was granted, there was not sufficient income from all of the property of the Dowlings to adequately take care of them. That was his testimony; yet we see that within a period of a year and a half, under the direction of the Senior Circuit Judge of Dade County, by his authority and direction, this estate, which had been barely producing enough income for these aged persons to live on comfortably, there had been awarded by him in fees over $90,000. He had provided for the sale or otherwise encumbering of all of the Florida assets of this estate. We see further that, not content with that, after Jewell Dowling had died they followed him into the grave, so to speak, by going into the Probate Court, and Judge Holt instructed his curators, Mr. Heller and Mr. Prunty, who, incidentally, was a partner at that time of Mr. Whiteside - - the same Mr. Whiteside who gave Judge Holt some $4,000 in return on his investment, the same Mr. Whiteside who had, several weeks prior to the awarding of the final fees in the Dowling case, arranged for Judge Holt to purchase two Jaguars at a reduced price, the lowest price at which they had been purchased by any person outside of the firm of Waco Motors. This same Judge Holt instructed the curators to follow these assets into the Probate Court and to contest the will and attempt once more to get their hands on these assets. Then when the Probate Judge by his ruling, after hearing all of the evidence, ruled that the will was valid and that the curators no longer had control of the assets, the Judge instructed them to appeal the decision.

Now, the attorneys here in the Senate will realize that this is very significant, and I want to particularly emphasize this as showing the desire of the Respondent to retain complete control of this estate. Here is the particular significant point there: An appeal is on the record below. When you take an appeal from a Circuit Court, a criminal court or a county court, regardless of who you appeal to, you go up on the record, and the Appellate Judge looks back and determines if the trial Judge who heard the evidence made proper rulings and whether the trial was fair and the decision was just. It is improper for the Appellate Judge to go out of the record. He must base his decision solely upon the record.

So what do we have here? When the case was appealed from a ruling adverse to Mr. Heller, what did Judge Holt do? He had the case transferred to his division, stating on the file that it was a related case.

Gentlemen, that just stands out in my mind as the most significant part of this case. Here he is willing to bring into his appellate proceedings matters which were dehors the record, matters which had no place or bearing upon the record, and say to the litigant, "Well, you lost below, but I know a lot of things that the County Judge didn't know and I'm not going to sit as an Appellate Judge. I'm going to sit here, knowing all the facts, and make my own rulings."

Now, gentlemen, I say that that is contrary to all that is proper in judicial decorum.

Another thing that stands out in this case is this: Throughout these entire proceedings in the administration of the Dowling estate, as soon as assets came into the hands of the curators, and throughout the entire case it is evident that their only desire was to obtain cash, to get tangible assets in their hands, so that they might disburse these fees; and every time assets came into their hands they disbursed those fees, and when they had finally sold all of the assets of the Dowlings, when they had stripped this estate or encumbered it by leases of ninety-nine years, there was scarcely any more cash in the estate than there was when the estate was turned over to the curators by the receiver.

Gentlemen, I ask you this: Was that curatorship operated in such a way as to protect these old people from designing persons? Who protected them from Heller? Who protected them from Prunty? Did Judge Holt protect them from Heller or from Prunty? They had a hearing on the sale of the lease, but Mr. Heller had only given notice the day before the hearing, and it was not received by the person most interested in obtaining that lease until the morning of the hearing. That was Mr. Marion Sibley's client. At that hearing Mr. Heller insisted on proceeding and that the Judge authorize the sale of the lease to the highest bidder, which was $90,500, but Mr. Sibley objected strenuously, and Mr. Heller, who was supposedly trying to realize all that he could for the estate, supposedly trying to bring the most money into the estate, strongly resisted this attempt by Mr. Marion Sibley to increase the estate; finally Judge Holt, after strenuous objection by Mr. Sibley, threw out all of the bids, including the one which Mr. Heller had insisted that he accept, and Mr. Sibley's client finally bid $127,000, which was some $37,000 over and above the price that had been insisted upon by the curators. And what is particularly ironic in this situation is that when Mr. Heller and Mr. Prunty went to request a fee for that transaction they had the audacity to say, "We are entitled to an increased fee because of our diligence we were able to increase the sale price by some $37,000," and the Judge awarded them a fee based upon that petition.

Gentlemen, I say to you that I could not possibly cover this Dowling case, but I submit to you that the awards of fees in excess of $90,000 out of an estate that, even by their own accountant, when you consider the Florida assets - - and those are the only assets over which they had control - - amounted to something over $400,000 - - awards of fees in the amount of some twenty-five percent of the total estate - - I say to you that is an unconscionable award of fees and I say to you that the Judge's conduct upon the Bench in this case alone has lost him the respect, has lost him the admiration, of the

people of his community and the people of the State of Florida.

Another thing I might point out is that Mr. Heller's fees are not over yet. He announced from the stand that he is still entitled to more fees from that estate since the last award of fees by Judge Holt. How much he will pray for I have no way of knowing; but through the instructions and through the actions of Judge Holt, in his judicial capacity, that estate was stripped of its assets, to the enrichment of a few lawyers who were close friends of Judge Holt, one of the lawyers a partner of Whiteside, the other lawyer a close enough friend of Judge Holt to have invited Judge Holt to accompany him on a trip to Harvard to attend some commencement exercises.

I would like to discuss another phase of the case which is particularly significant, and that is the wreck case, as we have commonly referred to it. Actually, in and of itself, standing alone, I would not stand before this Senate and ask that you impeach Judge Holt upon that one particular item; but the significant thing about the wreck case is the attitude of Judge Holt toward it. The significant thing about that case is the evidence of great pressure and influence being brought to bear in that case. The testimony in that case shows that Judge Holt attended a party. The testimony of Colonel Beck was that his hands were unsteady, that his face was flushed, that he appeared to have had more to drink at the time he saw him, that early in the evening, than a man in his position should have had.

The testimony of Mr. Herlofson, a man whom they kept up here waiting during the entire proceedings since July 30th, and never called him, a man whose testimony they were unable to shake - - and if they had been able to shake it they would certainly have called him back. They would have shown you where he was not telling the truth. Mr. Herlofson testified that he saw two gentlemen, whose names he did not know, carrying Judge Holt to the car, in a drunken condition.

The testimony of three other witnesses, a doorman and two other boys parking the cars of the guests was that Judge Holt was drunk and was carried to the car. The testimony of Mr. Shannon, who has no interest in this case, who operates a little filling station, was that he saw the Judge only minutes before the accident, was that he appeared to have been drinking and should not have been driving a car.

There is the testimony of Mr. McGonigal that he didn't think Judge Holt would get far in that condition; the testimony of Mrs. Ainsley, the nurse - - and certainly you could observe her demeanor and see that she was telling the truth - - that she detected the odor of alcohol on Judge Holt's breath; the uncontradicted fact, the fact that he was driving seventy miles an hour down this well-traveled thoroughfare, blowing his horn, cutting in and out of traffic, that he ran a red light and severely injured the occupants of a motorcycle who were proceeding under a green light. All of those facts, gentlemen, point conclusively, beyond any question, to the fact that Judge Holt was driving while intoxicated

But, as I say, that is not the important factor. The important factor is the influence that was brought to bear; these Police Officers who live in Miami, whose testimony was changed so completely from their previous testimony; the testimony of Mr. Headley, who admitted finally that he had given testimony to the Managers and Mr. Hopkins down in Miami to the effect that Judge Holt was drinking, and then changed his testimony completely here, and who tried to explain his previous testimony by saying that he was tired; the testimony of Officer Gschwind, who, when he drew a diagram up here before you, changed his diagram completely from the diagram that he had drawn immediately after the accident; the testimony of Officer St. John, who admitted to Mr. Hopkins that he had changed his testimony from that which he had given before Mr. Hopkins as to whether Judge Holt was drunk; and the testimony of Judge Holt himself, who testified under oath before the Board of Governors of The Florida Bar, or their agents, that he had no recollection of any occurrences after he had left the beach from that party, and who now comes up and says, "I gave that testimony, but now I remember; now I remember and now I can give you the details down to the last detail."

Gentlemen, I say to you that that case, in and of itself, is not significant except in the attitude of the Senior Circuit Judge of Dade County.

You, of course, have heard testimony about the Kurlan affair. I won't take a great deal of your time in going into that. We know that Judge Holt went to Europe with the man who, two days after he had awarded this man a $5,000 fee in a receivership - - the same man to whom, in a year and a half, he awarded $26,000 in fees; the same man who, in defiance of an order of the Supreme Court of the State of Florida, Judge Holt refused to require Mr. Kurlan to repay monies paid out of the account of the Flame Restaurant. We say to you, gentlemen, that this clearly shows that the Judge, as we have alleged in the Articles of Impeachment, allowed his personal relations with parties that appeared before him for their fees, to influence his judicial conduct.

The Respondent has brought in a number of character witnesses, and I think it is certainly to their credit that they will stand by their friend. I don't think there is anybody in public office who, if charged with a serious offense, cannot bring a hundred or more character witnesses, people of repute in the community, to testify for him. But they have no knowledge of the facts. They have no knowledge of these cases. They had no knowledge of any of these matters upon which you are basing your verdict today.

And what was the attitude of Judge Holt when he was on the witness stand? I recall very distinctly that when he was attempting to justify these excessive fees which he had awarded he said that here in Leon County there was an estimate in which some $350,000 was awarded in fees. Mr. Hopkins, on cross examination, said, "Well, Judge Holt, can you give us the amount of that estate?" Judge Holt said, "I'll have it for you in the morning." The next morning, Friday morning, he testified, and he never mentioned it. We recessed the case until Tuesday. Mr. Hopkins once more asked him, "Judge, what was the amount of that estate?" Judge Holt said, "I just haven't had time to check it." Mr. Hopkins said, "Judge, how did you know about the estate? How do you know about the fees?" The Judge said, "From examination of the files." Mr. Hopkins said, "When did you examine the files?" Judge Holt said, "I don't recall."

Later on Mr. Hopkins pinned him down and said, "Did you personally examine the files in this case?" And the Judge said, "No, my attorneys did." Mr. Hopkins said, "Do you know that there was nine million dollars involved in that case?" Judge Holt said, "No, sir." Mr. Hopkins asked, "Did you know that through the actions of the attorneys they saved two and a half million dollars for the estate, for the widow and her son?" Judge Holt said, "I don't know anything about that."

In other words, the entire defense has been one to set up smokescreens, to go into extraneous, immaterial matters that are foreign to the issues of the case.

Another example of that to me is particularly significant. Judge Holt took the stand and testified at length that the Miami Herald had been against him since his appointment to the Bench, since 1941 they had been against him, and that they said that any one of two hundred other lawyers would have been a better appointment. He said that particularly Mr. Pennekamp had been against him since, I believe, the late Forties, when Judge Holt said that if he had heard the contempt citation against Mr. Pennekamp and the Miami Herald he would have put him in jail, and he says that ever since that time Mr. Pennekamp has been against him, and he inferred or implied that the Miami Herald and other newspapers were entirely responsible for the trouble that he finds himself in today.

Well, gentlemen, on cross examination Mr. Hopkins picked up a copy of this book which Judge Holt had written and asked him to read from the foreword of that book, which was written in 1954 or '55. He asked him to read what, in 1954, Judge Holt had said about this man that he now claims has been against him since 1941, and the words he read were that "I want to express my appreciation and acknowledgement to my good friend John Pennekamp, of the Miami Herald." He publicly acknowledged his friendship, publicly acknowledged his help - - the same man that he now says is responsible for all the trouble that he has had since 1941.

Then we went a step further. Mr. Hopkins produced pho-

tostatic copies of editorials of the Miami Herald and said, "Now, Judge Holt, you say the Miami Herald has been against you and has opposed you since 1941, and that they have caused your troubles." He said, "Read these editorials. Is it now true that the Miami Herald endorsed you for reelection at your last election, the last time you sought office?" Judge Holt said, "Well, it was in a rather vague sort of way." Mr. Hopkins showed him an editorial and said, "Isn't it true that they endorsed you as one of their candidates for reelection?" And he finally had to admit that they had.

So I say to you gentlemen that that is another example of a smokescreen, of an issue that has no bearing on the issues before this Court today, an attempt to set up straw men to knock down and attempt to confuse the Senate in their deliberations.

There was an examination of a witness by Judge Hunt several days ago. He actually inferred, in the examination of that witness, that the Managers had sent down blank subpoenas and that the Managers had attempted to procure and to pay for witnesses to come up here and testify. I interrupted him and made an objection.

I said, "Judge Hunt, I invite you to go to the Secretary of the Senate and examine his records and determine if the Managers have at any time ever sent any blank subpoenas down to Miami and asked anybody to fill in the names of witnesses."

Then during the examination of this witness Mr. Bunten - - and I want to say here that I don't know whether Mr. Bunten is telling the truth about that telephone conversation or not, but I do know this: that the records which were read here clearly indicated that Bunten's position was such that he was trying to avoid testifying, was trying to avoid giving evidence against the most powerful individual in Dade County, was trying to do anything to avoid going to Tallahassee, because he said, "If I testify my testimony will be detrimental to Judge Holt, and if I testify my testimony will show that he was stone drunk;" and that Mr. Louis, the man who tapped his telephone and recorded that conversation, repeatedly told him "You've got to go if you are subpoenaed. There is no way out of it."

So I don't know the motives of Mr. Bunten. That is something that is the concern of the Senate, but I know his testimony about the drunkenness of Judge Holt is corroborated in every detail by the other witnesses. Can there be any question about that boy from Massachusetts, Ray Enos? Can there be any question about his sincerity or about his honesty, about his truthfulness, as he testified? After a strenuous, lengthy examination by Mr. Pierce, he was unable to shake him, and I feel sure that every member of this Senate was convinced that Enos was telling the truth.

At the time that Mr. Hunt started the examination of Mr. Bunten he made certain remarks which I objected to very strenuously - - and I want to read them, Mr. Hunt. He said first, "Mr. Bunten, how much are you being paid for this testimony?" and I objected and I said, "If the Court please, we object to counsel asking that kind of question. We think it is inappropriate in a proceeding of this nature and certainly unworthy of counsel for the Respondent to make such a statement."

He said, "Your Honor please, I intend to show the Senate that buying witnesses is most inappropriate in an impeachment proceeding." I said, "We object very strenuously to that statement. Unless he is prepared to prove such a statement as he has made, we ask that he be reprimanded for the statement." Then Mr. Hunt said these words:

"If counsel will close his mouth, Your Honor please, I will undertake to prove what I have said."

I submit to this Senate that that is another example of the same tactics, the same confusion, the same smokescreens that he has put before you during this entire proceeding, because I am confident, as I stand here, knowing Judge Hunt as I do, that he did not intend to say, that he was not serious for a minute, that Mr. Beasley or Mr. Musselman or Mr. Hopkins or myself were buying witnesses. He was merely defending his client to the utmost and he was throwing any bottleneck into this prosecution that he could; he was trying to cast any stone at the prosecution that he possibly could, in duty to his client. It is just another example of a smokescreen, a side issue or a straw man which has been set up in order to defeat the issues in this cause.

Gentlemen, in essence, the Respondent has asked you to say, "Yes, Judge Holt, we realize you have violated the Canons of Ethics for the government of Judges. We realize that the Courts or the Bar can do nothing about it. We realize you have accepted favors from attorneys practicing before you. We realize that you have allowed yourself to be improperly influenced by personal friendship. We realize that you have borrowed monies from attorneys practicing before you. We realize that you have awarded unnecessary fees. We realize that you have accepted gifts and favors from attorneys practicing before you. We realize that you have violated the Canons of Ethics, that have been set forth in the Bill of Particulars."

They are asking you to say, "Yes, we realize all that, but, in spite of that, we want you to return this man to his place of honor."

Gentlemen, I submit to you that after what has been proven conclusively in this hearing, after what has been disseminated to the people of the State of Florida, that they, the people of the State of Florida, will lose all confidence and respect and feeling of admiration that they have for the judiciary of the State of Florida. It will enable Judge Holt to go back to the Bench and try cases, to determine issues and judge the law and the facts on occasions on which counsel on one side will wonder, "Well, has the Judge accepted any favors from the other side? Has the Judge been influenced by these other people? Has the Judge violated the Canons of Ethics?"

I say to you that what they are asking you to do does not only constitute a disservice to the people of the State of Florida, but it is a disservice to Judge Holt as well. Not only is Judge Holt on trial today, but the entire judiciary of the State of Florida is on trial. In effect, the House of Representatives and the Senate are on trial today, because the people are looking to you for justice in this matter, and we submit to this Senate that Judge Holt, by his conduct and by his actions, has brought his Court into scandal and disrepute, and that if he is allowed by your verdict today to return to this high place of honor, the attorneys, the litigants, and the people of the State of Florida can no longer have confidence in the fair and impartial judiciary.

Thank you.

MR. BEASLEY: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Beasley.

MR. BEASLEY: That concludes the opening remarks of the Prosecution.

CHIEF JUSTICE TERRELL: How long are you gentlemen going to speak on the subject, Mr. Beasley. The reason I am inquiring is that under the Rules the Managers have the right to open and close.

MR. BEASLEY: There will be two arguments in closing, Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Are you going to arrange those arguments so you won't be duplicating?

MR. BEASLEY: Yes sir, as best we can. I don't mean to say that we will never mention the same thing twice, but, as best we can, we have arranged that already.

CHIEF JUSTICE TERRELL: I think the better practice would be for one of you to do the closing and the other one - - however you want to divide up the argument, just so there won't be duplications.

MR. BEASLEY: There won't be any noticeable duplication, Your Honor.

MR. HUNT: Your Honor, would the Senate like to take a five-minute recess or break before Mr. Pierce starts?

CHIEF JUSTICE TERRELL: The request is granted. If there's no objection, the Senate will take a five-minute recess before the Respondent commences.

Thereupon, beginning at 11:13 a.m., there was a short recess.

CHIEF JUSTICE TERRELL: Let's have order in Court. The Chair declares a quorum present. Counsel may proceed.

MR. WILLIAM C. PIERCE: May it please Your Honor, the Chief Justice, and you Senators of Florida:

Probably contrary to expectations, like a certain other character in history whom we don't have to mention, I'm not here at this time to make a speech. I'm going to devote a few minutes to doing something that I have never done in over thirty years of practice in trial work.

A lot of lawyers, in summing up cases, take the witness list and go down them, one by one, from the beginning to the end, and they try to retrace and review the testimony of the witnesses. I have always felt that that was time that could be spent better in arguing the general points involved, because the usual trial takes only a matter of either a day or a few days; but in this particular case here there are reasons why I think and my colleagues also think that a review, briefly, of all witnesses that have been before this Senate and testified should be briefly recalled to your attention, as well as a brief review of the contents of their testimony.

You Senators are not like the average jury. The average jury can sit there and listen to witnesses and get a better perspective and a better picture of the case than the lawyers can, because the lawyers have myriads of details - - watching witnesses, collecting witnesses, and so forth, that the jurors don't have. All they have to do is sit and listen, and the trial only consumes a matter of a few days or even a week, and the jurors usually know in the average Court case more about the facts of the case and the witnesses than the lawyers. But in this case here, Senators, it has been a most protracted case. We are now in, I believe, the sixth week, and you Senators, contrary to the average jury in a Court case, all have business interests that are larger than usual - - business or professional interests - - and you not only are busy but you're successful in your business or your profession. You have to be, or you wouldn't be here. Your constituents elect you because of your experience and your success and your standing in your community. The average jury is just picked at random from the box.

So, with as many recesses as we have had over weekends when with the very, very large number of witnesses that have appeared before you and given their testimony about a myriad of phases of the case, seem to render it advisable to have a brief review of the testimony of the witnesses.

One thing further before I get into the list of witnesses which I have collated according to the so-called charges contained in the so-called Bill of Particulars that I want to allude to, is this: You Senators will consider and will vote only upon the sworn testimony as to the facts which you Senators have heard from this witness stand here before you and in this Chamber, and not upon what may have come out in the testimony or been asked, either in the form of questions as to any previous statements that any witness may have given before any private investigators, any private eyes, self-seeking persons, newspaper articles, TV commentators, self-appointed paragons of civic virtue, but only upon the testimony which you have received.

Any prior statements that may have been alluded to can only be considered - - and I'm sure the Chief Justice will so advise you - - for the purpose of considering what weight, if any, you should give any testimony you hear, but not as any evidence, let alone proof, of any of the prior statements.

Several of these Articles in the so-called Bill of Particulars relate to the same subject - - not the same general subject but, actually, in a number of instances, to the same subject.

Now, Article I (a) 1 to Article I (a) 4, for instance, relate to the so-called friendship that Judge Holt had with Mr. Whiteside, a very prominent member of the Dade County Bar and a successful business man.

Article I (a) 5 to Article I (a) 6 refer to Judge Holt's friendship with a man by the name of Gersten, a young attorney practicing in his Court.

Article I (b) 4 refers also to Mr. Gersten, but talks about a Plymouth car and the Babcock curatorship.

Article I (c) also refers to Mr. Gersten, although they are disseminated throughout and in various places in the so-called Bill; but Article I (c) also refers to the money that was borrowed by Judge Holt from Lawyer Gersten.

Article I (a) 7 refers to Judge Holt's friendship with Mr. Joe Perkins.

Article I (d) 9 refers to the Peoples Water and Gas Company case, which, to a very, very great extent, almost entirely is presented to you, at least from the Prosecution, on the theory of a friendship existing between Judge Holt and Mr. Whiteside and Judge Prunty and Mr. Wright, and so forth No, Mr. Wright was not in that one.

But now all of these Articles, I (a) 1 to I (a) 4, I (a) 5 and I (a) 6, I (b) 4, I (a) 7 and I (d) 9, all have to do, although they are segregated throughout, not connected, not joined together where they can be reviewed at the same time and by the same standards, but they all refer to the same general proposition of friendship between the Judge and somebody else.

Now, what was the evidence as to the friendship? I'm reserving the so-called friendship between the Judge and Mr. Kurlan for a separate review. Now, as to Mr. Whiteside, the friendship with Mr. Whiteside, the Prosecution itself called Mr. Whiteside as their witness. What comfort they could get out of him I couldn't see.

He referred to the scrap steel deal and he referred to the Peoples Water and Gas Company case. You will remember Mr. Whiteside's testimony here that the testimony in that case was so large and so prolonged and so exhaustive that, even in technical legal language, which was testified was practically all the testimony by technical experts, who were experts in that field—that all of that testimony, put down volume on top of volume, would probably be over six feet high—taller than the average person. And that was all the testimony that was taken.

Now, with regard to the scrap iron deal, Mr. Whiteside testified, and so did Mr. Cloeter—who, incidentally, in striking contrast to the untestifying witness from Massachusetts who was paid by the taxpayers or somebody else from the Managers' table, paid his own expenses—and that has been before you—from Arizona or some place out West, and who came here voluntarily to give sworn testimony and subject himself to you Senators and to cross examination as to what he knew about the case and what the actual facts were.

Now, those were the witnesses with respect to the friendship, so-called, between Judge Holt and Mr. Whiteside, with the addition of Mr. Reginald Smith, who testified on the Jaguar deal. He was a representative, as you will remember —the very nice and very amusing Englishman who came here and testified and who finally had to say that if he had been offered, himself, cash or a check in the same amount as was tendered to him for the Jaguar or Jaguars involved in the so-called Judge Holt and Whiteside transaction, that as to those two Jaguars he would have—I can't remember his language and I certainly could not imitate his accent, but it was highly illuminating and very amusing - - he would have had to accept it.

Now, on the question of the Peoples Water and Gas Company case, which is the last item of Mr. Whiteside, it is a matter that the Managers know about and that certainly the taxpayers of Florida should know about. Judge Bandel, the Master in that case, was here for over two weeks and was paid as a prospective witness of the Managers, the Prosecution. He hasn't appeared yet. He was discharged, apparently because they couldn't get any grain of comfort from his testimony.

Now, so much for the Whiteside deal. We have the Gersten proposition, and Gersten is involved in I (a) 5, I (a) 6, I (b) 4 - - those three so-called subdivided Articles in the Bill.

Now, what was the testimony in that? The testimony was that the Judge borrowed money, gave a note for it, and paid it back later. Is there any testimony contrary to that? You Senators in that respect, under your oaths, are no different from the average jury. You must take the testimony as you hear it and. if there is no conflict, it should be accepted. Mr. Gersten testified, and so did Judge Holt, about the transaction of the borrowing of the money and the giving of the note, which was an open transaction and which would be

entirely different if there was any evil motive or any corrupt motive involved. Nothing under the table - - everything was on top of the table.

So there is no contrary testimony on the matter of the Gersten transaction, any more than there was with respect to the transaction between Mr. Whiteside and Judge Holt. There was no other testimony to show that there was any corruption whatsoever involved or any kickback involved—not one penny. The mere incident that the attorney, through his law firm, may have had litigation in the Court, is only a circumstance. There is no showing that there was any favoritism given to them. There is no showing that there was ever any evil motive whatsoever involved.

So much for the Whiteside and so much for the Gersten transactions, which disposes of about five or six of those charges, or so-called charges.

Now, Article I (a) 7 refers to the Joe Perkins friendship of Judge Holt, and the only Prosecution witness on that was Joe Perkins himself, and certainly the Managers could get no comfort from Joe Perkins. He testified that it was an honorable, above-board transaction, and that when they went to Haiti each one paid his own way. It is not unusual for Judges to travel. Judges, after all, are human beings like the rest of us - - like Senators, like anyone else in business or professional life, either employer or employee, in that respect. You heard also the testimony with respect to the Joe Perkins deal. You heard it from an eminent person of the Judiciary of Dade County, Circuit Judge Grady Crawford, who testified at length and was subjected to cross examination by the Managers. He completely supported what Joe Perkins, their witness, had testified.

So where is the evidence? I repeat, where is the evidence? You can ask yourselves and ask your consciences that question when you come to deliberate, not only upon this item but upon all the items. Where is the testimony to show any unworthiness or any corruption or any kickback under the table, and so forth, which, in my contemplation, the impeachment Article was really and actually framed to cover.

Now, with respect to the Peoples Water and Gas Company case. You Senators heard testimony of Mr. Whiteside about that. You Senators heard the testimony of Mr. Miller Walton, who was the attorney for the plaintiff in that case, the Peoples Water and Gas Company - - a very prominent attorney in Miami. Now, where were the attorneys for the other side who might have complained, might have criticized? They were here upon subpoena and were paid by the taxpayers of Florida. They never reached the witness stand, and they were subpoenaed by the table over there. Mr. Ben Shepard, who at that time I believe was City Attorney of Miami Beach - - after talking to him for several days and paying his way up here and back, paying his witness fees, they paid his way back to Miami. They didn't want him. That was Mr. Ben Shepard, and there were others also who might have been in a position to criticize.

And that case, by the way, was never appealed to the Supreme Court. All the fees were paid by the Peoples Water and Gas Company before the litigation was ever terminated, the only question was the question of the final decree as to whether or not the ordinance of Miami Beach was effective or whether or not it was unconstitutional and invalid. Judge Holt held that it was invalid and that the rates fixed by the Peoples Water and Gas Company were fair and were just and were reasonable and were proper, and that case never passed the Circuit Court of Dade County. I believe the testimony was that there was never even any re-hearing applied for in that case, let alone an appeal. So much for Peoples Water and Gas Company.

One more about the Haiti trip. That case was appealed to the Supreme Court and was affirmed. How can you vote any impeachment conviction upon any litigated case before a Circuit Judge, either in Dade County or anywhere else, where the case itself is appealed to the Supreme Court and the Supreme Court affirms it?

Now we get to the proposition of the Kurlan friendship with Judge Holt. Much to-do was made about the European trip. You heard the testimony of the witnesses produced by the Managers, by the Prosecution. Mr. O'Connor, of the Farr Tours. You heard the testimony of the lady - - I believe her name was Miss Esther Frank, if I got the name correctly. They both testified, and the substance of their testimony was that Judge Holt paid his expenses or that Mrs. Holt paid their own expenses for that trip.

Now, I can't see any comfort that the Managers could get with respect to that trip over there involving Kurlan, especially in impeachment proceedings of Judge Holt.

Now, they brought in the Court files in order to try to sustain Articles I (d) 4, I (d) 6, I (d) 1, I (d) 5 and I (d) 7, all involving receiverships of Mr. Kurlan. Now, what was the testimony on that? The only thing the Prosecution brought in was the Court files. You remember, Senators, when Mr. Beasley said, "We offer these Court files in evidence." I believe that was the last thing the Prosecution did before they rested - - just the Court files themselves.

Well, now, what was the testimony with reference to those? Anything improper?

Let's take up first the Belmont Park Motel case. There were three of them. Only two were before Judge Holt. One was before Judge Wiseheart. We have the testimony of Mr. Walker, one of the outstanding attorneys not only of Dade County but of Florida, the attorney for the plaintiff in that case, who paid the fees. You heard his testimony to the effect that everything was regular, you heard his testimony that the fees allowed were very reasonable, very proper; that his own client paid them, and that he was very much impressed and his client was very much impressed with the activities and the work done by Mr. Kurlan.

On the Salem Inn case, all the testimony they had was the Court file. In response to that, did they have any more sworn testimony, any more witnesses? No, but we brought in the attorney for the plaintiff in that case, Mr. Joe Hackney. You remember his testimony that Judge Holt had nothing to do with the fixing of the fees for the receiver, that that was by stipulation, stipulation of counsel, and went before Judge Holt and he merely signed the order, as all Circuit Judges most usually do, upon stipulation, and that he was immensely impressed with the work done, the fine work done by Mr. Kurlan.

You heard also Mr. Hackney testify about the Flame Restaurant case, about which much has been said here. The only thing the prosecution brought was the Court file. We brought the witness for the plaintiff, the attorney for the plaintiff, who paid the fee - - again Mr. Joe Hackney - - and he testified under oath that he was so impressed with Mr. Kurlan's work as receiver in the Salem Inn case that he himself requested Mr. Kurlan's appointment as receiver for the Flame Restaurant, and his fee was also paid by stipulation and paid for by the plaintiffs in the case, their own clients, and that everybody was pleased.

Where is the impeachment on that? Who is complaining, who is criticizing except possibly the Managers over there are trying to build up a flimsy case and trying to bring a lot of - - they talk about smoke screens. That's not only a smoke screen, but it's a red herring; but they are the ones that are guilty of it by putting those things into these so-called Articles in this Bill of Particulars.

Now, they referred to the Variety Hotel foreclosure, and all they had on that was that they put in the Court file, and that's all - - no witness. Nobody is criticizing, nobody's complaining, nobody's griping about it, nobody's pointing the finger at Judge Holt; but, on the contrary, what did the Respondent do? We brought in Mr. Morris Berick, the attorney for the plaintiff in that case, who paid the fee, who was satisfied with the work done by Mr. Kurlan and who said that everything was satisfactory and testified glowingly, glowingly - - and I say that advisedly - - about the work done by Mr. Kurlan.

You heard testimony about the Oceanic Villas case. That was another one where they put in the Court file, and that's all. There was no witness on that for the Prosecution, but only Mr. Horwitz, who represented the plaintiff in that case, and he came in as a Respondent's defense witness and testified that everything was not only regular but that they were very pleased and that their client paid the fee.

Where is there even any criticism, let alone any impeachment, involved there?

Now, on the Stengel case - - I leave that to my associate counsel, that and the Dowling case, more in detail; that in the Stengel case they had one witness, I believe, in addition to the Court file. They had Mr. Lloyd Towle, I believe he pronounces his name, from Miami Beach. The only thing I can remember about Attorney Towle's testimony, which was entirely favorable to the defense, not the Prosecution, was that his client had Raymond, and Raymond had Peter, and Peter had the bird. Those are about the main things I remember about Mr. Towle's testimony. Certainly, there was no adverse testimony to the contrary by the Prosecution - - no additional testimony.

Now, on the Dowling case, and Judge Prunty - - it is all linked together - - we have Article I (b) 3, Article I (d) 3; we have those two Articles about the Dowling case and also a special Article about Judge Prunty and the judicial fees or appointments that he has received from Judge Holt in respect to that same case, although it is a different Article.

Now, on that case, you heard the testimony of Mr. Heller. Whether you like Mr. Heller or whether you don't, whether you think he is experienced or whether you don't, whether he has been practicing a long time or whether he hasn't, is beside the point; but you heard his testimony as to all of the work done and the amount saved. Now, they are talking about assets up in Massachusetts. My goodness alive! $20,000 at least was saved by those curators down here in Florida when they found out, by rumor, that Mrs. Dowling had given a blank power of attorney to a drunken chauffeur-handyman to sell all of her assets, and that he had already sold $20,000 worth of stock in Boston, Massachusetts; and by the action of the curators here they stopped the payment of that money. You talk about the Massachusetts assets; it's a good thing the Florida curators were in that case. Certainly there is no testimony about any untestifying witness who was brought down here under a writ of protection, which I never heard of before - - probably the only one that was ever signed in Florida, and to which we did not object.

You heard the testimony of Mr. John Wright, the testimony of Mr. Perlmutter, all for the defendant. You heard the report and the testimony of Mr. Wasserman, all by the defense.

Now, was there any testimony anywhere, expert testimony, as to whether or not those fees were excessive? That is the way those things are decided; that's the way Courts decide them; that's the way Circuit Judges decide, if they want any testimony, as to whether they're fair or reasonable or not, or whether the work has been done. Not a single expert witness did they bring here - - and, presumably, they could not bring them in to review that file and to say that those fees or any of those fees were excessive or were exorbitant or unnecessary; but, on the contrary, we brought two of the eminent attorneys, who have the highest ratings in the lawyer's Bible, Martindale-Hubbell, from Miami, Mr. George Clark and Mr. Ralph Cooper, who testified that they had gone through the files at length, extensively, and in detail, and that in their opinion the fees allowed to everybody were fair and reasonable and not excessive.

You heard the testimony of Mr. Adrian McCune, Mr. S. Z. Bennett, Mr. Martin Sinsley - - all of those witnesses. You heard the testimony of the Deputy Sheriff, Mr. William W. Thompson. You heard the testimony of Mr. Matt Klein, the lawyer, who said that if they gave him the same trouble, to use his exact words - - if he, Mr. Dowling, kept them, meaning Mr. Heller and Judge Prunty - - "If he kept them humping like they kept me humping they certainly earned their fees." Now, is that proving the excessiveness of fees? That is proving, negatively, that they were not excessive, by a lawyer of standing in Miami, in addition to Mr. Cooper and Mr. Clark.

You heard the testimony of Mr. Wright that he went in Court as guardian ad litem and got a favorable order from Judge Holt with respect to her home.

You heard the testimony of Mr. Luther Mershon, a very eminent attorney of Miami, along the same line as to that fee.

Mr. Wasserman testified, and finally Judge Prunty himself came up and gave a full, detailed explanation of that case.

Now, believe it or not, that covers all the Articles except the very last Article, referring to what they call the judicial Canons of Ethics.

The only facts stated in support of the Article on judicial Canons, the only facts - - and you can read it. I invite your attention to read the Bill of Particulars on that last one, that refers to the Canon of Ethics. That is I (f), subdivided into numbers 1, 2, 3, and so forth - - but under I (f) the only fact referred to is the question of what happened on the night of December 20, 1955 at the party and at the subsequent unfortunate accident. Now, with regard to that, you have heard the testimony of Officer St. John, you heard the testimony of Officer Charles John Gschwind, you heard the testimony of Mr. Leonard John Feitelson, himself; you heard the testimony - - by the way, Mr. Feitelson gave evidence of a pretty good standard of fees when he had to pay out some twenty-four or twenty-five thousand dollars, I believe, or thereabouts, to his own lawyers in that case, and it never went to trial.

You heard the testimony, on the other hand, of the Prosecution, of this man Shannon and this man McGonigal, at the filling station. Applying the rules of common sense, you certainly couldn't base any impeachment on that, on their testimony, especially in the light of all this contradictory testimony, testimony to the contrary, by the Respondent's witnesses.

You heard the testimony of this man Beck. I've got that underlined, and all that he could say was that at the party he couldn't say that Judge Holt was drunk; he never saw him take a drink, but he had a glass in his hand, and his face was a little flushed and his hand was a little unsteady. Well, you could say the same thing about me today. You can say the same thing about a lot of people who have never been around a bar except the bar of justice.

Now, the other man, Herlofson. A careful analysis of his testimony shows that he couldn't remember anybody else at the party; he went there alone, then he went to the Post and Paddock. He left the Post and Paddock in about five minutes and came back; he couldn't remember anybody that was at the restaurant, at the Post and Paddock, with him; he couldn't remember the lady whose bag he says he came back for; he couldn't remember anything, and he didn't meet anybody out there, didn't see anybody out there except Judge Holt on that night, to his recollection.

Palpably he is unreliable - - and that's a charitable term to use for that testimony.

One last word. You heard the testimony of Doctor Von Storch and Doctor Warren Zundell and Doctor Tracy Haverfield, all with respect to the sobriety of Judge Holt immediately after the accident, when he was taken to the hospital. One doctor even put his nose in Judge Holt's mouth and couldn't detect any trace of the odor of alcohol.

You heard the testimony of Officer Gschwind and Officer Jack Headley, whose father is Chief of Police of Miami, and Officer Leon Schultz. You heard the testimony of Joe King, the doorman at Riccio's. You heard the testimony of Charles J. MacAleer, the adjuster for Perry Nichols' firm in Miami with respect to his investigation and the statements made to him, which were contrary to what those two service station attendants said who appeared before you gentlemen.

You heard the testimony of Joe Morelli, the waiter who served Judge Holt at Riccio's Restaurant, and you finally heard the testimony of Judge Prunty himself, who invited the Holts to leave with him, but they left in their own car and were thoroughly sober, as you heard him testify.

Now, Senators, I was born and raised in the South, like most of you. I have a high regard for colored people when they come into Court, especially a Court of this august standing - - the highest Court that has ever been empanelled in the history of Florida, and give testimony under oath, subjecting themselves to cross examination. A colored person, a southern Negro, won't lie. He won't do it, and I've heard a lot of southern white men say that they would take the word of a Negro, because he is afraid to do anything else but tell the truth, especially when he is under oath and subjected to cross examination.

Now, as to character witnesses, you have heard the Bishop who appeared here; you have heard Federal Judge Choate,

former Senator Gautier, Judge Paul Barns, Mr. Lantaff, Mr. Brautigam, Judge Wiseheart, Dean Rasco of the University of Miami Law School; Leonard Usina and, finally, Judge Ben Willard.

How much time have I got, Mr. Chief Justice? How much time have I consumed?

CHIEF JUSTICE TERRELL: You have consumed thirty-five minutes.

MR. PIERCE: I just want to say this in closing, Senators. I cannot subscribe to the proposition that the conduct of a Judge on the Bench should be gauged by any different standards than the conduct of an attorney-at-law because, in the first place, a Judge has to be a lawyer to be a Judge. I think that the same standards should generally prevail.

There was a case way back yonder in 1930 where a lawyer in Tampa shot a Policeman, in a fit of anger and with considerable drinking before this shooting. He was tried for assault with intent to murder the Policeman; he was tried by eminent counsel, he was convicted and sentenced to ten years, and his conviction was appealed to the Supreme Court and was affirmed. Later, while he was in Raiford serving his time disbarment proceedings were brought against him and he was served there in Raiford. He was paroled before the hearing before Circuit Judge Robles, who is now deceased, in Tampa. He was disbarred upon his convictions, and upon appeal to the Supreme Court, this same Chief Justice now presiding at this trial, who was Chief Justice then, and I believe he wrote the opinion reversing his disbarment, and in the course of the opinion he said this:

"Assuming that a legal conviction of the respondent for committing an infamous crime was duly proven" -- get this:

"Was duly proven" - -

and they are talking about an accident of Judge Holt down there - -

"Assuming that a legal conviction of respondent for committing an infamous crime was duly proven, there was before the Judge who tried the disbarment charge no evidence as to whether the crime was committed by the respondent under such circumstances as show him to be unfit for the trust and confidence reposed in him as an attorney or as showing any unprofessional act which unfit him for association with the fair and honorable members of the profession."

His disbarment was reversed; he went back, and today he is practicing law honorably in Tampa, and his brother in the past has been, actually, a member of your august body, —Mr. John Branch.

Now then, Senators, I want to repeat what I have said before. The Impeachment Article of the Constitution was never intended for such as this. It was intended for bribery, corruption, kickbacks—such conduct in office of that type and that character, and that alone, in order to invoke the Impeachment Article. This is the only time in history it has been done. I say, Senators, no such conduct even resembling that, no intimation, not one word that has been produced to show anything remotely resembling that.

With that, I leave it to my associates. Thank you.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I move you, sir, that the Senate stand in recess for a period of one hour.

CHIEF JUSTICE TERRELL: Gentlemen, you have heard the motion. All those in favor let it be known by saying "aye."

(Those in favor of the motion so voted).

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes against the motion).

CHIEF JUSTICE TERRELL: The motion is adopted. The Court will stand in recess for one hour.

Whereupon, the Senate, sitting as a Court of Impeachment, stood in recess at 12:07 o'clock P. M., until 1:07 o'clock P. M., pursuant to the motion made by Senator Davis, this day.

AFTERNOON SESSION

The Senate was called to order by Chief Justice Terrell at 1:07 p.m., all senators being present who were present at the roll call on the morning session of this day.

CHIEF JUSTICE TERRELL: Order in Court. The Chair declares a quorum present.

MR. SUMMERS: Mr. Chief Justice and Senators: I am fully prepared to argue this case, and I am also fully conscious of the historical significance of it, but I think that that significance relates to the precedents that we establish here and not to the individuals and personalities, and for that reason I now return my speech to my desk and waive the right to make it.

MR. HUNT: Mr. Chief Justice and Senators: I would like to open by making the observation that my good friend Glenn Summers has probably recorded the very finest speech that will be heard in this august chamber.

St. Francis of Assisi, a lover of God and a lover of nature, once implored:

"Lord, make me an instrument of Thy peace. Where there is hatred let me show love; where injury, pardon; where there is doubt, faith; where there is despair, hope; where there is darkness, light; and where there is sadness, joy.

"Oh, Divine Master, grant that I may not so much seek to be consoled as to console; to be understood as to understand, to be loved as to love, for it is in giving that we receive; it is in pardoning that we are pardoned."

The prosecution has very dutifully suggested that the Senate of this State should try the Respondent solely upon the evidence and upon such a firm basis of procedure that the entire State will feel a glow of pride at the results of this trial.

We join the prosecution in that statement and in that hope. I do, however, suggest, starting out with the automobile accident, which points out the thought I have in mind, that this Senate is not only the judge of the law, but the sole judge of the weight of the evidence. It is solely your prerogative, and yours alone, to weigh the evidence and to determine where the truth lies. His Honor on the bench will instruct you that in the event of a conflict of testimony it is your duty and yours alone, to resolve the conflict, if you can, without imputing perjury to any witness or set of witnesses; that if, however, that is impossible, then it is your duty, and yours alone, to select the witness or set of witnesses whom you believe to be telling the truth before you and to found your verdict upon that type of testimony.

I would suggest to the Senate, in connection with the automobile accident, that the testimony of Mr. Bunten and Mr. Enos and Mr. Hibbs hardly balances out against the sworn, clear-cut, clear-eyed testimony of United States District Judge Emett Choate, or of Senior Judge Marshall C. Wiseheart or of Circuit Judge John Prunty, or of all the officers who testified before you, or of the three doctors who were brought here and testified before you.

I would suggest that you seriously consider that a man who, when approached by a professional witness finder, sees fit to try to contact the other side for a discussion of what he will testify if the other side permits him to go to Tallahassee - - I suggest that he is not worthy of your belief or of your confidence. In fact, in the present state of the record, I have the feeling that this body will take some action in connection with Mr. Bunten.

Mr. Enos was one of the nominees of Mr. Bunten. Mr. Hibbs was the second nominee of Mr. Bunten. Car parkers, who, according to Mr. Bunten's own voice, he, and he alone knew and would be able to produce.

You will recall the testimony likewise of Ronnie Herlofson, one of the members of the fast-trotting social set of Miami Beach. Ronnie deliberately and arrogantly refused to testify the truth before this body. He stated to you that which he wanted to give you and he arrogantly and callously refused

to tell you the rest of it. He refused to name the lady friend of the evening for whose purse he had returned to the Dodge house at a quarter to eight. He saw and testified only that which he, in his base depravity, wanted to testify. He wanted to hurt. Who sent him up here to hurt? I don't know, but God knows, and I think the situation will eventually be taken care of. You will recall the testimony that, very conveniently, Mr. Herlofson was taken to the hotel room with the three car parkers, where their testimony was supposed to be ironed out, but you know it wasn't very well ironed out.

Two of them said that Judge Holt was supported to his car. The third one said that he only stumbled, and nobody else was around. You gentlemen know that is true; and, almost as an afterthought, this man Hibbs said, "Oh, yes, Mr. Herlofson was there," and he told you, not that Herlofson ran in from an automobile to get a purse and went right on back, but he told you that he wandered out on the front porch where the cars were being summoned and saw Judge Holt and then went on back to the Dodge party.

And at what time did the bus boy witnesses fix Judge Holt's departure? Nine o'clock, or thereabouts. This man Hibbs couldn't pin it down any better than between nine and ten. The Senate will recall that Mr. Herlofson, Ronnie, knew full well that it was a quarter till eight when he returned for the purse of the phantom lady.

I say to you, as God is my judge, you have no evidence before you that this Respondent drove an automobile in a drunken condition. The signs are all to the contrary. The sworn testimony is all to the contrary, and that clear-eyed big buck male negro boy who sat up here - - I think you gentlemen of this Court believe his testimony, and you know he gave that same statement, as did the waiters at Riccio's, the day or the second day following the accident, when this Respondent lay in the hospital, unable to talk and much less able to plan or fix for his future.

They have talked about Mr. Whiteside and his relations with Judge Holt. You gentlemen heard Mr. Whiteside's testimony. You know it was direct, you know it was without evasion, you know he is one of the responsible and outstanding citizens of our community, not only from the stand-point of being a high-standing member of the legal professsion, but likewise in the business world; and many of you know that he is blessed with a fine wife and a fine family. True, he did not need Judge Holt's comparatively small investment in the cylinder transaction. He admitted that. He invited Judge Holt to take a flyer with him to the extent that he felt he might be able to afford to lose his money. The deal hit, so to speak. It sounded almost fantastic, but when Mr. Cloeter, the big fellow from the oil fields of Wyoming, flew here, on his own and at his own expense, and detailed that entire transaction to you, you knew then that there was a cylinder transaction; that it was handled precisely as Mr. Whiteside had advised you; and that there was no reason to assign corruption or dishonesty to this judge of sixteen years' service in the Eleventh Circuit.

Counsel has mentioned gifts and favors. I have been guilty of indulging in that practice a hundred times. I doubt if there is a member in this Senate who, if confronted with the purchase of an automobile or a rug or a Frigidaire or anything else, wouldn't call anyone who he thought might help him get a shaved price, but I further know that there is not a member of this Senate who would do any such thing with the idea of selling or bartering away his power of office. It is only the evil and the suspicious of nature who would assign or attribute any such low or base motive to a man who did precisely and only what all men do. That, to me, is one of the smallest assignments that possibly could be made against any public official. I know that Mr. Whiteside didn't consider that Judge Holt owed him some favor of his office and I know that Judge Holt didn't consider that he owed Mr. Whiteside any favor in exchange for a telephone call to a client to get him a good price. It is too ridiculous to take up the time of one man, let alone thirty-eight, plus the Honorable Chief Justice, at the expense of the taxpayers of this State.

As developed before the House Investigating Committee, it was stated that in the course of my practice I gave two favors to circuit judges. On one Christmas it was my pleasure to deliver a frozen ring-necked pheasant which I had shot in South Dakota to Judge Holt and his fine wife and to Judge Marshall Wiseheart and his fine wife.

About two years ago I gave another present to a circuit judge at Christmas-time. I thought he might use it. Gift-wrapped, I presented a big, king-sized bottle of Phillips Milk of Magnesia to Judge Vincent C. Giblin, and he acknowledged it before the House Investigating Committee. Now, neither Judge Giblin nor Judge Holt or Judge Wiseheart has ever returned those favors to me. I have never been appointed anything, nor has it ever come to my attention that the last gift which I mentiond ever did any good.

Now, gentlemen, about the Gersten transaction. My good friend from Hillsborough unwittingly misstated the facts - - as I am sure he didn't intend to lightly skip over the four-hundred-dollar payment. In the first place, all the testimony is to the effect that, in Gersten's presence, Judge Holt lamented the fact that an old car which his son had up at the University of North Carolina was costing him so much money every month. Gersten himself, according to his testimony, proposed and promoted the idea of the Judge turning in that car or selling it and getting a new one, and he undertook to use contacts that he had with Christopher motors to procure a shaved-down price. By the way, that was reported in the press as a "shake-down price". I called it "shaved-down" - s-h-a-v-e-d. He did procure him a shaved-down price for the preceding year's model. and he took him up there and Gersten advanced the money after Judge Holt had given him his note. For a period of eight days there was a missing $400 in the transaction, but all the evidence is to the effect that the old automobile was to be sold in North Carolina for $400 and that that was to be applied upon the Gersten $2,185 loan.

Now gentlemen, if that had been a concealed or fraudulent transaction, one in which this judge of long service had intended to barter and sell the power of his office to Mr. Gersten, you know full well, No. 1, that the $400 would never have been returned to Gersten, as it was, by Mrs. Holt's check, duly deposited to Mr. Gersten's account, and in evidence here before the Senate. Counsel makes a great to-do about subsequent payments upon that over-all obligation coming after this or after that or after that. Their theory is that the cops started coming and then the Judge started paying. That's not true. The first repayment on that obligation was made on February 7th and deposited on the 8th in Gersten's account. That was long before April 30, 1956.

We have to go by the earmarks of these things. A lot of times in court you have to judge men and events by your own common sense; and Montesquieu, the most famous continental jurist of all time, once said that all law is common sense, and all that is not common sense is not law.

You know and I know that, that when the Holt family voluntarily appeared before the Bar, making a clean breast to them, as they didn't have to do, of their entire financial lives, you know and I know that they had nothing to hide.

This senior jurist entertained no evil or improper motive. He attempted no concealment: rather did he volunteer and produce the very evidence which those who would dispose of him have, by misconstruction and distortion, brought before this trial body as a brand to use against him. You know and I know that some two or three months later, when he appointed Gersten as a guardian ad litem in the Babcock Estate case, that he was not waiting around with his pen in his hand to appoint Gersten to the first job that came along. You know that Gersten was his second choice in that appointment. He appointed John W. Thompson first. If this man had entertained evil purpose or design, if he had been immoral and wicked, and had intended to repay Joe Gersten with some power or favor of his office, you know that it would have been done long before that. There would have been appointments before that and after that, and Joe Gersten would not have been his second choice.

Now, I don't think that it is good policy or good taste for a judge to make a practice of borrowing money from lawyers. I think it probably is not in good taste for a judge to make a practice of investing with lawyers. However, gentlemen, it is done. I know some of the finest judges in Florida who have business interests with equally fine lawyers, and I know they talk freely about it at open Bar affairs. It is known throughout the Bar. There is no concealment on anybody's part and nobody but the evil and the low and the small, going before any of those judges in court, would expect him

to throw the switch against him merely because he was in an arms-length business deal with a man of the opposition.

The members of this Senate know that practically every mortgage and loan company, practically every bank, has on its board of directors one or more lawyers. Do you know there is not a great deal of difference between borrowing money from a bank which, to an extent, is controlled by a lawyer or lawyers or a law firm, and borrowing it from a lawyer direct, where there is nothing secret about it; where a note in due form is given for it and it is later fully and completely repaid, and where, before any finger of comment was pointed about the transaction, a partial payment had been made upon the loan principal. It takes the evil and the small and the low, without testimony, without anything else, to imply wrongdoing to an honest transaction.

I know that this Senate will require more than a suspicious circumstance, which is voiced in its entirety by the vocal outbursts of my honorable opponents, to convict this man of anything.

You have heard a lot about the Perkins trip with Judge Grady Crawford and their wives and Judge Holt. I know that the members of this Senate know that Joe Perkins didn't lie about that, that Weesner didn't lie about it, and Judge Holt didn't lie about it, and Judge Grady Crawford, as fine a man and Mason as ever existed, didn't lie about it. There is nobody going to lie about a little three or four-hundred-dollar bill on a social trip of that kind, nor was there any occasion for anybody not to pay his full share on that trip.

Oh, yes, they find the suspicious circumstance that, a month or two before the trip, by the blind filing rule procedure which exists in our Circuit, a piece of litigation in which Weesner was a party had fallen in Judge Holt's division. All the testimony is to the effect that the man knew nothing about it until long after his return. All the testimony before the Senate, and the files themselves, show that the first order or two in that case were entered by another circuit judge. The case finally came on for hearing before Judge Holt - - strictly a matter of law, not the first word of testimony presented by the plaintiff - - and Judge Holt entered a counterclaim judgment for the defendant. It was appealed to the Supreme Court and unanimously affirmed.

The records of this Senate in the office of the Secretary, gentlemen, will show that the House Managers had the opposing attorneys up here with their records. They will further show, gentlemen of the Senate, that they dismissed them and sent them back to Miami without calling them in here to testify. And yet they have the effrontery, purely and simply by their own argument, their own forensics, if you please, to ask you to convict this man on that specification. What gall!

They introduce five files here in which Judge Holt had appointed a man named L. J. Kurlan as receiver. You have before you the testimony of every plaintiff's lawyer in those cases. You recall my argument at the outset of this case that if we had to go into the matter of these fees we would be required to bring up here either the parties or their counsel and go into each one of them, to show the Senate that each and every litigant was well pleased with Kurlan's administration and, in every instance, fixed the fee by negotiation. I think you are convinced now that you have heard the evidence which I told you would be brought here. In each and every case the fee was arranged and stipulated by the parties.

The Flame Restaurant case was a sore spot. It involved a bitter fight between partners, as you could gather here from the witness stand. The first appeal to the Supreme Court was not from this Respondent's order; it was from an order of another circuit judge who refused a supersedeas bond. They don't point that out because they don't want you to know it. He said there were three appeals. The gentleman from Hillsborough would have you assign all of them to this Respondent, without telling you that the first one, and the basic appeal, was from the order of the present senior circuit judge. There, again, is my idea of some degree of unfairness. Certainly Mr. and Mrs. Kurlan and Judge and Mrs. Holt went to Europe. You heard the gentleman from Hillsborough say that Judge Holt paid him a big fee right before they sailed. Gentlemen of the Senate, you heard William H. Walker, Jr., who is a director and whose father founded the first federal building and loan association in America - -the First Federal Savings & Loan Association of Miami - - and who sits on its board and who has one of the largest law firms in Miami - - you heard him tell you that Judge Holt had nothing to do with it; that he himself called in the receiver, the two receivers, Mr. Didrence and Mr. Kurlan, and their attorneys; that they arranged the fees and he drew the checks, and to this good day there is no order in that file approving, fixing, or confirming those fees, because the defendants gave up. You will recall that they gave them two or three chances to refinance; they dismissed one foreclosure case to give them further opportunities to refinance. They went before this Respondent Judge with the stipulation which had the effect of giving up and permitting the plaintiff to go through with a pro forma foreclosure proceeding. You know that this Respondent did not pay Kurlan a large fee out of that case before they sailed for Europe; but in the matter of trying to do some broken field running and knitting and crocheting to construct and weave a case against this man, they have woven together dates, circumstances, court files, trips, and they hold them up and say, "Convict him. It looks mighty suspicious."

Did they bring the first witness before this august body to testify that one single fee paid to Mr. Kurlan as receiver was undeserved? On the other hand, did we not bring many witnesses on behalf of the Respondent? Yes, even the man who lost the Flame Restaurant case, Joe Hackney, and his client, to testify that in each and every case not only were the services of the man Kurlan completely satisfactory, but that they or their clients - - speaking of the attorneys who came here - - fixed his fees.

So, by shoving before you five or six court files, which I haven't heard speak out orally yet, and certainly they haven't been sworn in - - and producing no testimony whatever on the point of these specifications, the gentlemen of the opposition have the brazen effrontery to expect you wise and sensible and just gentlemen to vote this man out of his office.

Now, the Dowling case. The Dowling file has been brought here from the Circuit Court, as has the file in the Probate Court case. That case degenerated into a fight, an admitted fight, between lawyers in Massachusetts and lawyers in Florida, and I say to you, and you lawyers know, particularly those of you who practice in our tourist cities, where old people come and sometimes, but very seldom, die - - you know full well that there is often a fight on from the very beginning as to whether the domiciliary estate will belong to the State of Florida or whether it will be permitted to be taken off to some other state. There is a state tax advantage, a decided tax advantage, in retaining in Florida that which belongs to Florida.

Here is Mr. Dowling. According to his attorney, he was as sharp as a tack when he made his will. He declared himself a resident of Florida in his will; yet the legal machinery in Massachusetts was set in motion immediately, and that produced a large portion of the reason for these fees. The Massachusetts machinery was set in motion by this man Meserve, who flew out of here yesterday without gracing the witness chair - - Mr. Meserve represented the witness Perlmutter, whom you heard testify on the stand. He went before a judge up there whom he claimed to know very, very, very well, and there was no doubt but that Mr. Perlmutter would be appointed the permanent conservator in Massachusetts. To his utter surprise, when the order was signed Mr. Meserve, the attorney for Perlmutter, came out with the appointment in his pocket, naming him, not Perlmutter; so Mr. Meserve wound up as the conservator in Massachusetts of Mr. Dowling's estate.

You heard Mr. Mershon's testimony about this woman Bickford coming down to Miami and running through two red lights of warning from Judge Holt's co-curator, Judge Prunty, and the chief deputy sheriff, that the old lady had been officially adjudicated incompetent and could not legally sign a paper - - and she was warned against attempting to have her sign a paper. That dissuaded her not at all. On a pretext, she got Mrs. Dowling alone, had some doctor thump her chest, and had her sign this paper, got it off air mail to whom? To Mr. Meserve. And what did he do with it? He took it to court and had his friend named Emory appointed as Mrs. Dowling's conservator.

And who immediately became attorney for Mrs. Dowling's conservator? You tell me - - Mr. Meserve.

So the Massachusetts people did exactly what my honorable opponents are railing and snorting about the Florida lawyers trying to do. The Florida lawyers, indeed, made every effort to keep the estate where they and the judge of their appointment thought the estate should be - - down there where the old folks had their permanent home; and they did fight, and they fought like cats and dogs, against the efforts of Meserve and his crowd to win the battle of the Dowlings' estates. Our Florida boys lost in a big way.

Now, the situation that developed in Massachusetts was based on plain greed and a desire to have the old people physically taken care of down here and nursed and guarded and fed; but to have their personal fortunes and estates liquidated and handled in Massachusetts. That was the plan, and they won the battle. That development accounted for a large portion of the $60,000 - - not $90,000. It was $64,524 in fees which Judge Holt paid the co-curators. I want you to recall, gentlemen, that the $90,000 figure is a big build-up for argument and for purposes of prejudice. That figure included compensation to three examining physicians; it included compensation to certified public accountants; it included compensation to Perlmutter, the receiver; it included compensation to Stanley Stein, the attorney for the receiver, and it included compensation to Lane, Muir, Wakefield, Frazier & Lane, attorneys for Mrs. Dowling, and to Warren, Klein, Lehrman, Shorenstein & Klein, attorneys for Mr. Dowling.

It all adds up, just like it does in the Stengel case. It looks at first blush like an awful big fee and, just like taxes or sin, you can make a whale of a speech against it. But, gentlemen, I want you to probe your own consciences, your own background of experience and common sense, and ask yourself this question: why didn't they bring outstanding lawyers of Florida, or judges, to this witness chair to testify that they had examined this file from a professional standpoint and that these fees are excessive and exorbitant? Why is it that all you have before you are the screaming statements and protestations and complaints and accusations of those who are employed, if you please, to prosecute this man? Will you ask yourself if these fees were so outlandish? Will you ask why they didn't bring in Judge Walker, Judge Welch, Judge Clay Lewis, or some of these judges close around Tallahassee? Why didn't they bring you some professional evidence, something on which you could proceed under the law and on the oath which you have given to Almighty God; tangible evidence on which you could base a verdict against this man? Why is it that all they have done is to compute these figures and give you by argument their personal versions of whether the fees should have been predicated solely on the Florida assets or whether they should have been predicated on the over-all assets, or otherwise?

You have not had before you testimony of the first lawyer or the first judge, the first professional witness of any type, upon which you can possibly base a condemnation of this man for the discretionary orders, if you please, which he entered in the Dowling and Stengel cases.

They do look large. But I have examined the files and I can see reason for them. Whether I would have granted those fees or not, as the Supreme Court said in its opinion in the case involving these matters, is not for present determination. The sole premise is that the Judge had the discretion, under law, to exercise his own best judgment, there being no fixed guide or rule of law to serve him as a signpost in such matters. He exercised his best discretion. Perhaps there were factors before him that these cold files do not reflect. I don't know. As Judge Holt said on the stand, "I sat where he sat," and because in the Leon County case he hadn't sat where that judge sat, he refused to express any opinion as to whether the fees were reasonable or unreasonable, but intended merely to call to the attention of the Senate the fact that Dade County is not alone in the situation where large fees are occasionally granted.

I want you gentlemen, if you will, when you go into your deliberations, to ask yourselves a question: why is it that in the prosecution of this case you have no evidence but only the inflamed forensics of the prosecution? Oh, they think it's terrible. Those old folks were treated terribly. Those fees were shocking to the conscience! You have no proof, and the Court will tell you you cannot accept the opinion of those gentlemen as proof. You know very well they are all paid to do what they are doing and they are highly prejudiced. They are the most prejudiced four people against this Respondent you could find, and I know that you will not accept their oral outbursts alone as evidence that these discretionary orders which this circuit judge entered were wrong to such extreme extent that you should deprive him of his office. You have not the first whit of testimony upon the point.

I do not consider any of the matters as requiring belabored response. I call your attention to the fact that some of the outstanding people in south Florida have willingly and gladly come here to take that witness stand to testify that, before God, this Respondent is a good man and a good judge. You gentlemen know that the testimony of United States District Judge Emett Choate is not available save and except that he voluntarily makes it available because of his desire to see justice done. You know full well that senior Judge Marshall Wiseheart does not have his oath for sale and that he truly wants this man back filling his own division on that bench.

You know full well that that fine Cracker man, Ben Willard, would go to hell before he would lie, and you know that he considers this Respondent a fine and outstanding man, with integrity and honor, and he has heard or seen nothing to change his opinion.

You know that Congressman Lantaff, you know that ex-Senator Gautier, you know that Bishop Louttit who has known this man and has peered within his heart and soul for thirty years, would not have been here, in his clerical garb, taking an oath and testifying as he did, if he didn't believe it before his God.

Let me point out one thing else to you, then I'm going to take my seat. None of us have had the time to make a speech here that would be fit to write into the history books, so eager has been our desire to hasten the trial and help the Court bring an end to its session after its long and patient hearings. We have had no time for speech preparation.

The crux of the prosecution's case, gentlemen, is that Judge Holt's conduct has been so terribly bad that public disgrace and disrepute has been brought to his office. Well, if that is true, will someone answer me two things?

Why didn't they bring witnesses and put them in that witness chair to state any such opinion under oath? Why didn't they bring the people from the power company or from Burdine's or from the telephone company or from the Rotary Club or the Kiwanis Club or the merchants' association or the Chamber of Commerce or the ministerial association? Where are they?

They all sit at that table over there - - at that table there - - and their paid man, Roper. You haven't heard one word of testimony on which to base a conclusion that Judge Holt has so conducted himself as to forfeit his office. You are asked to do that on argument alone, if you please, to listen to the loud accusations and representations and orations of the honorable Managers of the House and their professional prosecutors. Become inflamed and angered, if you will, against this man on the basis of precisely nothing and, becoming inflamed and angered at him as a result of the forensics of which my friends are so capable, deprive him of his office.

It sounds silly, doesn't it? It is silly - - just as silly as I have stated it.

We brought people here and we put his character in evidence for judicial integrity and honor. They had ample opportunity, with their man Roper and their other paid investigators, to counter that testimony, didn't they? It has been done - - it is usually done. When a defendant puts his reputation in issue he is asking for it, and you lawyers know it and you laymen know it, because he might be answered. You fully expect that whatever the prosecution can gather against you will be marched to the witness stand. The prosecutor won't depend solely on his own ability to sway you by prejudiced and impassioned argument. He'll do that too, but he will base it on some kind of testimony.

Now, where are the members of the Dade County public, Senators, who say that this man has so conducted himself as to bring disrespect and disrepute to his office? They haven't been in this Senate chamber.

The honorable House Managers, immediately after their em-

ployment and immediately after they had gone over the record of what happened before the House Investigative Committee, what did they do? Did they gather those witnesses together and come over here and present the case upon which the House voted this impeachment? They did not. They spent weeks in the Dade County area, with professional investigators and the use of the telephone and subpoena, summoning people to the courthouse where they had been given a room in the State Attorney's office, looking for witnesses against this Respondent. They bent every effort to find witnesses in Dade County to come up here to sustain this awful thing that has been voted against a fine man and his fine family. Did they find them? Eventually their man Roper, whom they employed and left down there scouring the woods, doing his best to find the smell of whiskey, or just any old thing to bring up here with which to deprive this man of his position of honor and trust which he has held for sixteen years - - eventually, what did they bring, Senators? They brought Bunten, Enos, and one other - - oh, yes, and Ronnie. Are you going to convict this man on Bunten, Enos, and Ronnie? I think not.

Are you going to convict this man because of the discretionary order or two discretionary orders, or three or four or five, which he entered, in good faith, in a case, with not the first iota of testimony indicating any profit to himself, any undercover kick-back, or anything of that nature? I think you will not.

I think you realize that here you must lay down a formula for history. I think you will recall the second action of the House in 1871, when the House took the Judge Magbee case from the Senate - - recalled his impeachment - - on the grounds that the acts committed by Judge Magbee were discretionary acts, as to which no rule of law, or a guide, existed, and that the House then did not consider that a discretionary act, without more, would constitute a proper ground for impeachment; so it withdrew the Impeachment Article from the Senate.

Do you realize that every decree of divorce or of maintenance and support; orders entered in child custody cases or habeas corpus actions; or for the foreclosure of a mortgage; or refusal to foreclose a mortgage; the appointment of a receiver, or refusal to appoint a receiver; the granting of an injunction, or the refusal to grant an injunction; the disbarment of a lawyer, or refusal to disbar a lawyer; and a hundred more, are discretionary acts of the judges selected under our system of government in this State?

Do you realize that when you pick out one or two fee orders and use that as a basis for an impeachment trial, what you are inviting to be brought up here in the future time to come? A mortgage foreclosure decree is in the same category as a fee order.

Now, if this man received back any fees - - which they don't, even in their wildest moments, charge - - then I would say they had something, as they had in the Halsted Ritter case. Halsted Ritter received it back and put it in a tin box, and then lied to the United States Government in his Federal tax reports for two straight years. Don't let them tell you that this case is patterned after the Halsted Ritter case. In our first brief here we sought to shoot that idea full of holes by printing the entire Halsted Ritter articles of impeachment as an appendix to the brief, and you gentlemen have that before you.

I want to say to you that, before God, under oath, gentlemen, which you took to be members of the Court, and which, as I stated before, transformed you from political senators to judicial senators, as God is our judge, this man, under all the evidence and for lack of evidence sufficient to warrant conviction, should be returned to the office which awaits him, and to the people who expect him back and who have successively elected him to serve in that office.

Thank you.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: Mr. Chief Justice, I move you, sir, that the Senate stand in recess for about ten minutes.

CHIEF JUSTICE TERRELL: That will be the order, if there is no objection.

Whereupon, there being no objection, the Court stood in recess from 2:07 P. M. to 2:25 P. M.

CHIEF JUSTICE TERRELL: Order in Court. The Chair declares a quorum present.

MR. HOPKINS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Hopkins.

MR. HOPKINS: Mr. Chief Justice and Members of the Senate, sitting as Court of Impeachment:

In just a very few minutes now we will turn the question of the impeachment of Judge Holt over to you for decision.

It becomes my duty to make the closing argument on behalf of the Managers and, since Judge Hunt has just gotten through with his fine remarks, but those that included Mr. Johnson and myself as professional prosecutors, I can't help but think about those remarks in starting out on my closing argument.

You know, all of us like to feel that we are doing some good sometimes. All of us like to feel that we are given credit for being sincere, and I have been tried before in this business that I am in. As a matter of fact, it is an old trick that counsel have used for generations, as you lawyers know. I remember last year, on an assignment to another part of this state I was tried before a jury in another County, in a strange jurisdiction. I like to feel that I was doing that job because the Governor of the State had asked me to do it, and I like to feel that I did that job because I was helping preserve the integrity of a branch of our government so that it couldn't be questioned.

In this instance, I was asked to assist in the prosecution of this case by, I think, two of the finest members of the entire Legislature.

Mr. Johnson and I are not going to decide this case. That is not our responsibility. When we present the facts here fully, fairly and clearly, we have done our job and our responsibility ceases and yours begins. That is exactly what we have tried to do and that is what I intend to do in these few remaining remarks and few remaining minutes.

As we go into the closing stages of this case we want to remember at all times that we are not trying Judge Holt on a criminal prosecution. The only question before this Senate is whether or not he has brought his Court in disrepute. The only question is, does the public still have the same confidence in Judge Holt and in Judge Holt's Court that it had before or that it should have in our judicial system in this State. When the public loses confidence in the judiciary there can be no question that they lose confidence in the entire set-up of our State Government; so that is the question before this Senate, and not the question as to whether or not Judge Holt is guilty of any criminal offense.

In submitting that to the Senate I do not mean to imply that we haven't shown in any instance that the Judge has been guilty of a violation of the criminal laws. We think we have shown that, but the only question before this Senate is, shall they confirm the action of the House of Representatives in impeaching this man from office.

Now, going into the question as to whether or not the Court has been brought in disrepute - - and I want to make another remark, and I want to slow down here to make it very carefully. That is, that if we have failed to start any member of this Senate to thinking - - and we take the responsibility if we have so failed - - if we have failed to start any member of this Senate to thinking, and he is thinking about voting not to impeach this man, I want to call your attention and get you to explain for yourself this Stengel case that everybody has passed over. I want you to think about that a minute in deciding whether or not this Court has been brought into disrepute. You remember that Judge Holt didn't touch on it, except the questions that I asked him when he was on the stand. You remember that when this snow job was being done regarding fees that not one lawyer in the state, not one Judge in this state, said the fees and the handling of the Stengel case were proper. Think about that one as you think over the question of disrepute of this office. Not one single lawyer was asked that question, although they had them up here from Miami, one behind

the other. Did one Judge testify, even Judge Holt himself? When asked about the case he didn't remember, as you recall, what orders were entered in that case. All he could remember was that there was some pervert in the family somewhere.

And if we haven't started that member of the Senate to thinking before you vote in this case, answer that question, as to whether or not you can justify letting this man go back to the Bench, with this case being in the record here in Tallahassee or anywhere else in the state.

How about this old lady, who hadn't done anything? How about this woman that was living down there in Miami, in a nice home, who had a home, some beautiful furniture that she had accumulated and some birds that she loved; and Judge Holt appointed a curator to protect her assets. All she had in Florida was a home, some furniture and some birds, and Judge Holt appointed somebody a curator, a conservator if you please, to protect her from designing persons.

How much protection did she get? The protection that she got - - and it's undenied in the record and there is no explanation of it - - the protection that she got was to have her home sold, her birds sold, her furniture sold, everything sold, and she didn't receive one single nickel out of it. And to think that I send people to the penitentiary for stealing twenty-five or fifty dollars!

Not one cent did she get out of it; but let's see where she was left. She was left with no home, no furniture. She had left the state. The Judge had entered an order putting the plaintiff and the defendant in jail if they showed up here again: and they even followed her to another state and got exactly, within a few dollars, her entire income for the next year, and they did it all in four months.

When you think about putting this man back on the Bench, feeling that the people of the State of Florida will have respect for the judiciary, think about that Stengel case. If you didn't have another matter presented to you, if we had sat down and not made these trips and had not made these investigations and stayed up until all hours of the night in this case and if we had presented only the Stengel case, could you do anything but say, "We can't afford to put this man back on the Bench"?

And it is not a question of this man alone; it is a question of the entire people of the State of Florida. It is a question of the entire judiciary of this state as against the welfare of one man. You can't say, "I want this stuff to go on, I'll let this stuff go on in Miami, but I'm against it in my own Circuit," because it affects the entire state of Florida, because of the fact that you are establishing the type of integrity, the type of conduct and the type of the judiciary that you're going to have in your state.

Let's go from that just a minute. Let's go to this wreck case for a minute. Let's approach it from a little different angle, because that's all we're interested in - - the entire story Let's approach it from a different angle just a minute. Judge Holt, unfortunately, was in an accident on December 20. 1955. You have heard that there was publicity in that case in regard to whether or not he was sober or drunk. That was on the lips of the people of Dade County - - "Was Judge Holt drunk or was he sober on the night of this wreck?" He was at the party before that. That was in the public eye, too - - "Had Judge Holt drunk too much? Was Judge Holt drunk or was Judge Holt sober?" That was the question in Dade County at that time.

Then the question came up as to whether or not Judge Holt was guilty of reckless driving. Was Judge Holt driving properly or was he driving too fast? Did he cross a red light or didn't he cross a red light, or what is the situation? The people of Dade County wanted to know the answer.

Another thing that came out in the Press, if you recall, was that Judge Holt had large sums of money on him. I think the rumor had or the publicity had it that it was coming out of all his pockets. He had more money on him than a man ordinarily has, and the people of Dade County were wondering about that.

Judge Holt then leaves, after getting out of the hospital, and goes to North Carolina. He is convalescing up there, and instead of coming back and standing trial in the City Court, like anybody else, he sent down a prepared statement; he sent down a prepared statement, entering his plea, in effect, nolo contendere, without trying to explain that wreck in any way. I'm not forgetting the fact that he put in that statement that he couldn't get down there. I am not leaving out anything on that, because I am going to bring out all the facts. That statement said, "I can't get down there and stand trial," in effect, "like anypody else, because I am sick and I am convalescing, and on the advice of my doctors I don't want to appear, and I'll just say this: I'll enter a plea to reckless driving and we won't have any testimony in this case." The Judge fines him, and eleven days later, on March 6, 1956, in case you want to check it - - on March 6, 1956 he comes back to the Bench there and enters an order putting that Dowling case out of Judge Milledge's Division and into his, in order to follow that case further. A man back on the Bench, entering orders, seven days after sending that message down from North Carolina.

It's not a question of whether he was guilty of reckless driving, it's not a question of whether he was guilty of drunken driving. but, through his action, has he brought his Court in disrepute?

Can you have confidence or can the people of Dade County have the same confidence in a man that has had this experience and has been guilty of this conduct? We are not through with that case, however, by a long way. Just those facts alone are sufficient to bring the Court into disrepute. If you want to take his word all the way through, his Court has been brought in disrepute.

Let's see what we've got. I know they want to concentrate the testimony on one witness - - a young fellow who apparently was afraid to come up here and testify, afraid of Judge Holt; the man who was hunting counsel on Judge Holt's side to see if he could get out of coming some time later, if they could figure some kind of scheme to get him out of it. But even that, even that telephone conversation that they took illegally - - - and I say advisedly to you lawyer members of this Court - - even this wire-tapping showed that this man said, "If I have to go to Tallahassee and testify, and if I testify to the truth, I won't help Judge Holt. He was stone drunk.

But that is not the only testimony we have. We have, in succession - - and I will cover it hurriedly - - we have Ray Hibbs, who testified that he saw Judge Holt put in the Station Wagon in a drunken condition. We have the testimony of Ray Enos, who testified that he saw him stumbling down the steps near the home there on one occasion, and that in his opinion he was drunk. We have Ronnie Herlofson, who testified that when he went back to the Dodge house Judge Holt was being carried to the car. We have the testimony of Colonel Jesse Beck, who said that he saw him drunk. We have the testimony of Shannon, at the filling station, who said that he was too drunk to drive an automobile and he didn't expect him to get very far down the street. We have the testimony of McGonigal, who was at the filling station and who testified likewise that in his opinion Judge Holt was drunk.

We have Jack Headley who testified - - and you remember he is the son of the Chief of Police - - that he had a call from a man who said, "I'm a friend of Judge Holt's, and he was at a party just before the wreck and he was drunk."

Is there any question about whether he was actually drunk or not, on that testimony? I don't believe I have ever tried a manslaughter case any place that had any more overwhelming testimony as to the drunken driving than this case does. What other facts could you want?

What about the physical facts, where the man is sitting there in a Jaguar, way off course - - and I will say that for the benefit of you who know Miami or want to go to the trouble to look at the map that we have had marked - - that Judge Holt was way off of course if he was going to the Jesters' party as he told you he thought he was. Judge Holt didn't know where he was going, he didn't know where he was, and that is the condition that he was in at that time.

But regardless of the fact whether we had any testimony whatsoever from any witness as to his drinking; even if Mrs. Ainsley, a Registered Nurse since 1932, hadn't taken the stand and said, "I smelled whiskey on his breath when he came in the hospital" - - even if we didn't have any of this testimony, the fact that this man was sitting at a stop street,

with his horn blowing steadily; the fact that he went up to one of the busy Avenues of Miami, blowing his horn intermittently; the fact that he was going over seventy miles an hour and ran a stop light, should be sufficient to tell you the condition that he was in.

But, regardless of the condition he was in, we submit that the question is still, "Do the people still have the same confidence in this Judge and has the Court been brought in disrepute?"

One further statement regarding the wreck and I'll be through. I think this, really, is one of the most important things in this entire case. That is, Judge Holt's testimony, himself. I know that in some of the Circuits in which I have practiced, some of the Counties to the west of me here in the adjoining Circuit, we have certain citizens that we talk to from time to time that tell us one story under oath, and then, if another story fits a little better, they tell a different story under oath the second time, and I don't agree with Mr. Pierce regarding the type of people that tell the truth always. We have had some of them to change their stories like that; but never in my life did I expect to see a man who sat on the Circuit Bench change his testimony under oath to fit the circumstances of a case before. Can you wonder whether or not the Court is being brought in disrepute when this testimony is being made public, when a man comes up before the Bar and says, "Gentlemen of the Bar, I was a lawyer or I am a lawyer. I welcome you to go into my past. I welcome you to go into my records," and he goes in voluntarily and testifies before that Bar, and then he finds that they're not going to find as he would like for them to find, that the Bar has the courage and the stamina to stand up to him, as a lawyer, although he is a Judge; so he says, "No, no. I made a mistake submitting my case to you. You don't have any jurisdiction. I am going to take this case to the Supreme Court," and that's exactly what he did in order not to have the Bar take disciplinary action. That is the law, properly so, but haven't you got this situation: You've got a man who submitted himself to a certain group of people to be checked. He was checked. They were finding against him, and he decided that they don't have jurisdiction.

Does that bring the Court and the man into disrepute? Isn't that alone sufficient to show that the man is in disrepute? Is everybody wrong? Is the Bar wrong? Are these other people wrong? Are these eight or ten witnesses wrong? Is the undenied testimony regarding the Stengel case wrong?

Somebody must be right. Can there be any question about the confidence that the public can have in the Courts if this man is returned to the Circuit Bench?

But, getting back to the question of the testimony before the Bar again. Judge Holt admitted here on the stand, on cross examination, that he had testified before the Bar, that he did not remember anything that happened after he left the Dodge party on that night. He admitted that that was his testimony, I believe in June, 1956, after he was back on the Bench, he admitted that he had testified that way; and now he comes before this Senate, sitting as a Court of Impeachment, and testifies under oath that he remembers going to Riccio's Restaurant, that he remembers that he left there at exactly ten minutes after eleven - - a story to fit the circumstances of this case. Can such conduct as that leave any question in anybody's mind as to whether or not the judiciary would be brought in disrepute if this man were put back on the Bench?

Members of the Court, I realize that I am not taking all of the time allowed me. I realize that you want to bring this thing to a conclusion, and I say, in conclusion, to you that we at this stage, on behalf of the Managers of the House, take from our shoulders the responsibility of the impeachment of Judge George E. Holt, and we do now pass that responsibility on to you.

MR. BEASLEY: Mr. Chief Justice, that concludes the argument of the Prosecution.

CHIEF JUSTICE TERRELL: It was brought to my attention yesterday that it was the desire of the Senate sitting as a Court of Impeachment that I deliver a charge covering the law and the facts at the conclusion of the trial.

In my study and preparation to try the Article of Impeachment, I realized that it would be impossible for every Senator to prepare himself to perform the function of judge and juror as the law contemplates. You had not the time or facilities to do this. For this reason I prepared and made available to you the brief that was handed you before the trial.

The trial has been long and tedious and I sense the idea that the Senate is ready to dispose of the case. When this is the case, lengthy charges avail little. The plain fact for you to resolve is whether or not Judge Holt's conduct in the manner and at the time charged has been such as to render him unfaithful to the trust imposed in him, has brought his office into disrepute and discredit, or has caused the public to lose confidence in him and the judiciary of the State. To establish the affirmative of these charges much evidence has been introduced, but it is within the province of the Senate, sitting as a Court of Impeachment, to discard any evidence which is presented by either side which it considers immaterial, and base its judgment solely on that which is relevant to the issues in the cause.

I think it appropriate to instruct you that when you sit as a Court of Impeachment your function is entirely different from that you exercise when you sit as the representative of Duval, Madison, Alachua, Leon or some other senatorial district. As a Court of Impeachment, you represent the people of the State of Florida, in the same manner that the Governor represents them or as Senators Holland or Smathers represent them in Washington. This is true because only a small number of state officers may be subject to your jurisdiction, the Governor, the Cabinet, the Supreme Court Justices, District Courts of Appeal Judges and Circuit Court Judges. Under the constitution, any of these judges may be sitting in Miami this week, Jacksonville next week, and Pensacola or some other circuit the following weeks. Since this is the case, when you sit as a Court of Impeachment, you are confronted only with state officers and you perform solely a state function.

In the brief furnished you at the opening of this trial, I drew your attention to the fact that impeachment is a tradition that came to us from the English law and by its original inception any citizen was subject to impeachment. Over the ages it has been refined until at present, under the federal constitution, only the President, Vice President and civil officers of the United States are subject to impeachment and may be removed from office for and on conviction of treason, bribery or other high crimes and misdemeanors. I pointed out in the forepart of this charge that only the Governor and those who are impeachable may be impeached for "any misdemeanor in office." I mention this because the law governing impeachment has not been made by the Legislature, but by the United States Senate, or the State Senate, as the case may be, when sitting as a Court of Impeachment. Since the provisions of the Federal and Florida Constitutions governing impeachment are so similar and since this is the first case the Florida Senate has tried, it has had no opportunity to accumulate an impeachment code or body of law governing the procedure in impeachment. In the trial of this case, we have followed the law and precedents established by the United States Senate where applicable, otherwise, we have promulgated our own rules and precedents.

The grounds for impeachment and removal from office in Florida as defined by the constitution lie in the commission of "any misdemeanor in office." Where the state constitution uses the term "misdemeanor in office," the Federal Constitution uses the term "high crimes and misdemeanors." Neither term is susceptible of exact definition. "They are generalizations that must be construed to be as broad as the mischief which the process of impeachment was designed to correct." The Supreme Court of Florida in In Re Investigation of Circuit Judge (Fla.) 93 So. (2d) 601, defined the scope of misdemeanor in office as comprehending much more than was comprehended by the term "misdemeanor" as employed by statute or the common law. In Cannon's Precedents of the House of Representatives, Vol. 6, page 779, the author comes up with the following as to what constitutes an impeachable offense under the constitution:

"Although frequently debated, and the negative advocated by some high authorities, it is now, we believe, considered that impeachment is not confined alone to acts which are forbidden by the constitution or the Federal Statutes. The

better sustained and modern view is that the provision for impeachment in the constitution applies not only to high crimes and misdemeanors as those words were understood at common law, but also acts which are not defined as criminal and subject to indictment, but also to those which affect the public and the public welfare. Thus an official may be impeached for offenses of political character or gross betrayal of public interest, also abuses or betrayal of trust, for inexcusable neglect of duty or the tyrannical abuse of power, as one writer puts it, for breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness, when habitual or in the performance of official duties, gross indecency, profanity, obscenity or other languages used in the discharge of an official function which tends to bring his office into disrepute, or for the abuse or reckless exercise of discretionary powers as well as the breach of an official duty imposed by statute or the common law."

In Hinds' Precedents of the House of Representatives, Vol. 3, pages 738 and 739, the same doctrine is approved and elaborated on. The Supreme Court of this state approved the doctrine in In Re Investigation of Circuit Judge (Fla.) 93 So.(2d) 601, so there can be no doubt that a Circuit Judge may be impeached when his personal conduct becomes such that the public loses respect for or confidence in him, or when he acts in such a manner as to disgrace his office. In fact, it may now be stated that most of the well considered impeachment cases were based on some aspect of the abuse of official trust.

The Senate was clothed with power to try all impeachments because of its broad wisdom and knowledge of the situation and the person impeached. Besides the accused's personal conduct, the standard of personal and official morals he imposes on himself, there is involved in every impeachment trial the theory and philosophy of our democracy and the manner in which the one charged has executed his responsibility in relation to it. There is also involved the seriousness with which the accused recognizes and performs the trust imposed in him by the people. At one time, the Senate was required to examine into and approve the personal qualifications of the accused when appointed. If he happens to be one subject to suspension, the Senate must advise and consent to the suspension and if subject to impeachment the Senate must try him. All of these factors give the Senate a knowledge of the person and the situation that no other body has, so the composite judgments of the Senate in an impeachment must be the soundest and most dependable that can be secured.

The function of the Chief Justice in an impeachment is to conduct the trial in legal, orderly fashion, so as to reflect credit on our process of administering justice. He should render such aid to the Senate as counsel and guide that he can. The constitution does not give him the right to vote on any question, even in the case of a tie. He may rule on such questions of evidence and procedure as the rules permit, but any ruling he makes may be appealed to the Senate, which may affirm or reverse him. I find that in the trial of President Johnson on impeachment charges, the Senate did reverse Chief Justice Salmon P. Chase. I do not hesitate to say that whatever success I may have achieved in the conduct of this trial is due largely to the splendid cooperation of the members of the Senate.

So much for the law in which you, as a Senate, sitting as a Court of Impeachment, find yourselves. Let us now give consideration to the evidence briefly. You are the sole judge of the weight, probity and sufficiency of the evidence and may reject any that you consider immaterial. The fact that none of us ever participated in an impeachment trial before will doubtless give you plenty of rejecting to do. The real point you are confronted with is whether or not the evidence shows that Judge Holt was guilty of the acts with which he is charged, or such of them as to bring his court into scandal and disrepute, causing the people of his circuit to lose confidence in him as a Judge as well as in the manner he administers justice.

This question involves an inquiry not only into Judge Holt's personal, but his official conduct as well. Has he conducted himself and the affairs of his office in keeping with the best traditions of the judiciary? In my judgment, an inquiry of this character requires much deeper searching and consideration than is required to weigh the evidence and determine the proof against one charged with stealing a cow or an automobile. The difference explains why the Senate is charged with the duty of trying the issues in impeachment cases. A high state officer is involved and the issues much more complicated and far reaching.

Your responsibility in this is all the more serious because your judgment is final and there is no appeal from it. Unless Respondent is deprived of some constitutional guaranty, your conscience and discretion are the law of the case, and I have found no instance in which the courts have interfered with the Senators' judgment. The constitution makes you sole judges of law and sufficiency of the evidence.

The evidence on which the Managers rely for conviction and that on which Respondent relies for acquittal involves many conflicts. This is frequently the case. It is your duty to resolve these conflicts if it is possible, but if you find that it is impossible, then you may reject that which you consider untrue and base your judgment solely on that which you consider worthy of belief.

If you consider that the evidence as a whole supports the charges laid against respondent, you should find him guilty, but if you find the evidence insufficient to support the charges you should find him not guilty.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I would like to make a motion, but prior to making that motion I would like to make a short statement.

At various times today I have talked to Senators. I think I have talked to a majority of the members of the Senate, and I feel that it is the will and desire of the majority not to consider this matter behind closed doors, but to immediately take a roll call.

I therefore move you, sir, that we proceed with the roll call in this trial.

SENATOR BELSER: I second the motion.

SENATOR CARLTON: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Carlton.

SENATOR CARLTON: I would like to make this public statement: That I would like to express my personal thanks and gratitude to you for the fine, noble and unselfish service you have rendered during the course of this trial.

Everyone in this Senate, I am sure, is aware of the fine record of public service that you have demonstrated down through the years in the judiciary, and that this trial has been characterized by that same splendid type of leadership. I feel certain that other members of this Senate share with me this same feeling of appreciation, and I will ask them to join with me in rising and expressing to you their thanks for your leadership and your service.

(All the members of the Senate arose).

CHIEF JUSTICE TERRELL: I want to state that I very much appreciate the attitude of the Senate and the expression of the Senate in their dealing with this matter. There has at least been one pleasant aspect of it - - that is, to return to the Senate after forty years' absence and make some new acquaintances as Senators and rub elbows with you fellows that I have known here for many years. That has been a very pleasant aspect of this meeting.

I appreciate your feeling, and I am glad to have had the opportunity to have been with you in this capacity.

MR. HUNT: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Judge Hunt.

MR. HUNT: On behalf of Judge Holt and his family, my associates and myself, we wish to go on record wholeheartedly and unequivocally as joining in that fine expression voiced by Senator Carlton.

SENATOR KNIGHT: If you desire to sustain the Article of Impeachment you vote "yes." If you desire not to sustain it you vote "no." Your Honor, is that correct?

CHIEF JUSTICE TERRELL: The way that question has been put in the United States Senate is like this:

"Gentlemen, do you consider the Respondent guilty or not guilty?"

If you consider that he is guilty you say "guilty" and if you consider that he is not guilty you say "not guilty."

Now, you can state it the way you want to, as you like. I don't think this Senate is bound by the practice in the United States Senate. I just say that is the practice up there.

SENATOR KNIGHT: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Knight.

SENATOR KNIGHT: I move you, sir, that if you desire to sustain the Article of Impeachment of the House that you vote "yes," and if you desire not to sustain them you vote "nay."

A SENATOR: Second the motion.

CHIEF JUSTICE TERRELL: You have heard the motion. All in favor of it let it be known by saying "aye."

(Those in favor of the motion so voted).

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes against the motion).

CHIEF JUSTICE TERRELL: The "ayes" have it and the motion is adopted. If you vote for impeachment of Judge Holt, vote "aye." If you vote to not impeach him you vote "no."

Call the roll, Mr. Secretary.

Whereupon the Secretary called the roll and the vote was:

Yeas—20.

Adams	Connor	Gautier	Neblett
Boyd	Davis	Hair	Pearce
Cabot	Dickinson	Houghton	Pope
Carlton	Eaton	Kelly	Shands
Carraway	Edwards	Kickliter	Stenstrom

Nays—14.

Beall	Branch	Johns	Rawls
Belser	Clarke	Johnson	Stratton
Bishop	Getzen	Knight	
Brackin	Hodges	Morgan	

MR. SUMMERS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Summers.

MR. SUMMERS: If it is in order, sir, we move you now that the Senate enter an order of acquittal of this Respondent.

CHIEF JUSTICE TERRELL: I have an order here prepared and in the absence of any objection that will be the order. By your vote you have refused to convict Judge Holt of the charge of impeachment, by the required two-thirds vote of the Senators present, and a formal order will be entered accordingly.

SENATOR KNIGHT: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Knight.

SENATOR KNIGHT: I believe it was announced that anybody that wanted to could qualify his vote by a written statement. Would it be his privilege to do so?

CHIEF JUSTICE TERRELL: Yes. Any Senator that wants to file a written explanation of his vote is at liberty to do so.

Whereupon the following explanations of votes were filed with the Secretary of the Senate:

The preponderance of evidence presented in this case leaves no doubt in my mind but that Judge George E. Holt, by both his professional actions and personal conduct has brought his Court into a state of scandal and disrepute.

Should such actions as exemplified by Judge Holt be condoned, the Courts of Florida would, in my opinion, utterly fail in the dispensation of justice.

TOM ADAMS
Senator, 29th District

When the House Managers rested their case, the Senate by a majority vote abandoned the following in the Bill of Particulars: Article 1 (b) 2, 1 (d) 8, and 1 (e) 1, 2 and 3 from further consideration. I am of the opinion, after hearing evidence on Article I (a) 1, 2, 3 and 4 pertaining to Whiteside these should be abandoned for total lack of evidence of any wrong doing on the part of Whiteside, and are abandoned by me in reaching my conclusion.

For the reason that to my mind the manifest weight and the probative force of the evidence on the other charges, many times given by unwilling witnesses, when considered as a whole compels the conclusion that Judge Holt's actions have brought his office into disrepute and has brought discredit to the judiciary of this state, and patently establishes a gross abuse of the judicial prerogatives vested in him in rank violation of the obligations of his constitutional office.

W. A. SHANDS
Senator, 32nd District

It is my firm belief that a member of the judiciary should at all times conduct his court and personal affairs so that his actions would be above reproach. I do not feel that this respondent by his actions and the evidence submitted has so conducted himself. On the basis of the testimony it is my firm belief that the best interest of our judiciary and the state would not be served by reinstating Judge Holt to the 11th Judicial Circuit.

WILSON CARRAWAY
Senator, 8th District

In my opinion, the House Managers, have failed to sustain the burden of proof required under the rules of evidence and the law of impeachment, which requires that the charges brought against the Respondent must be proven beyond a reasonable doubt. That Judge Holt has been proven guilty of being indiscreet, of mismanagement of his business affairs and of not exercising prudent judgment in the management of his personal affairs is undisputed. But these are not lawful ground for impeachment.

Much publicity has been given to the alleged facts in this case. I refuse to cast my vote on innuendos or slanted construction on a selected group of circumstances. My decision has been reached, so far as humanly possible, solely from the sworn testimony at this trial which has been lacking in legal sufficiency to sustain conviction.

In substance, Judge Holt has had the past ten years of his personal and official life and actions scrutinized by the many competent investigators. A Judge is a human being subject to human frailties and even though we would sometimes like to raise him above the actions of humans, such is impossible and he is certainly apt to err. Isolated instances over a long period of time of impropriety has been proven. If these are adequate to impeach a Circuit Judge, I dare say the Senate of the State of Florida could well sit in continuous impeachment proceedings concerning others of our Circuit Courts.

I think that Judge Holt should be strongly reprimanded by this Senate for his overall actions and conducts, but I do not believe that such amounts to sufficient legal grounds for impeachment.

An analysis of the bill of particulars together with the legal evidence before the Senate, reveals substantially the following:

Article I, (a): 1, 2, 3, and 4,

The Whiteside transactions revealed no bad motive, attempt to influence the Court, or anything contrary to one friend doing a favor for another life long friend.

Specifications 5 and 6: This is the only loan proven made by an attorney over a period of ten years or longer. Mr. Gersten, without contradiction, testified that he made the proffer of this loan, and that the loan has been paid in full. This, in my opinion is improper conduct, but not adequate to sustain impeachment. As to the purchase of automobiles below retail price, I think everyone, be he Judge

or not, seeks a bargain, and certainly such is not adequate grounds for impeachment.

Specification 7: Testimony adduced before the Senate revealed that the lawsuit set out was in the nature of a friendly suit, and under these circumstances I do not believe that this specification is adequate grounds for impeachment.

Article I (b) Specification 1: L. J. Kurlan was proven to be a competent receiver, who performed his services in a competent manner. As to the trip to Europe, a Judge, like others, makes a number of his friends in his working days. To hold that he cannot socially associate with anyone who performs services for or before his Court, would place a Judge in a vacuum, and this should not be done. It is undisputed that Judge Holt paid all of his expenses on this trip.

Specification 2. Abandoned by the House Managers.

Specifications 3 and 4. The House Managers proved large fees were awarded in several cases. They did not prove that such fees were excessive nor unnecessary, while the respondent proved beyond a reasonable doubt, by lawyers of unimpeachable ability, that such fees, while maybe liberal, were not unnecessary nor excessive. It is not within the province of the Senate to usurp the functions of the Supreme Court of Florida to review the reasonableness of such fees.

Article I (d)

As to all of the specifications set out under this Article, the House Managers seem to urge this Senate to serve as an Appellate Court with reference to the proper decision of a Judicial Officer. No bad motive, evil intent, fraud, nor collusion was shown on the part of the respondent. These cases involved extensive technical questions, and especially revolved around jurisdictions of the Courts of Florida. Certainly the entire estates were involved, whether the situs of the property was in Massachusetts, New Jersey or Florida. Each of these cases demonstrated the greed of particular relatives or friends in utilizing every means to acquire the property of unfortunate aged people. Instance after instance, demonstrated flagrant violations of the Florida Court's order after they had sought the jurisdiction of the Court. All of these factors must be taken into consideration in arriving at a decision concerning whether these fees were excessive or unnecessary, but in the absence of fraud, evil intent, or other wrongful motive, the Senate is not the proper forum to decide such matters.

Article I (8):

To hold that by means of publicity through the media of newspapers, radio, television, and other forms of news dissemination, formulates a distrust of the general public as regards a particular Judge, thereby bringing his Court in disrepute to such an extent that such Judge should be impeached, would in effect grant to such news sources the power of impeachment. Certainly, State Attorney Brautigam was brought in disrepute by attempting to suppress a Grand Jury report, and following the reasoning of the House Managers, then he should have been impeached. Yet, the Supreme Court of Florida highly complimented Mr. Brautigam for urging upon the Court a lawful action rather than to yield to popular demand which was to a great extent generated by such news media.

In my opinion, the most serious charge brought by the Managers, is the one accusing Judge Holt of being guilty of causing an accident while drunk. The House Managers have adduced testimony to sustain this serious charge, while on the other hand the Respondent has refuted this charge with competent testimony. There is an irreconcilable conflict in the testimony on this charge, and there is no question but that perjury was committed by some persons. I shall not attempt to ascertain who was guilty of perjury but I am of the opinion that these allegations have not been proven beyond a reasonable doubt.

In summation, the House Managers through shotgun allegations covering a long period of time, and after examining every facet of Judge Holt's personal and official conduct urge this Senate to remove Judge Holt from an office that he was elected to by the people of the 11th Judicial Circuit. Excluding innuendo, speculation, "they say," and other so-called evidence, it is my opinion that they have failed to prove beyond a reasonable doubt that George E. Holt has been guilty of an impeachable offense.

JOHN RAWLS
Senator, 4th District

Counsel for respondent has harped all the way through this proceeding upon whether evidence has been produced which would convict the respondent of a crime or misdemeanor.

We are not here concerned with that proposition.

Dishonesty is not necessarily involved in our deliberations and neither is the question of whether any act has been committed for which an information or indictment would lie.

What we are concerned with and on which we must base our judgment is whether the respondent has by his over-all course of conduct in the administration of his court and his social contacts brought his court into disrepute and by association has cast a cloud on our entire judicial system.

It is my judgment, after many days of testimony, argument and many hours of personal deliberation on what I have heard, he has done just that.

I must therefore vote for sustaining the Article of Impeachment.

J. FRANK HOUGHTON
Senator, 11th District

1 The witnesses have not proven the allegations of the Article of Impeachment and/or Bill of Particulars in any impeachable conduct or act by the Respondent.

2 No proof of any fees included in the charge being excessive or illegal.

3 I do not personally believe that impeachment charges can be predicated upon acts beyond his current term of office.

4 It is my interpretation of the law that any matter reviewable by an appellate court is within the narrow limitations of impeachment offenses, i.e. Immorality, Graft, Alcoholism, using the Power of his Office for personal or monetary benefits.

5 Only three suspicious acts have been proven, and there is no showing that they were flagrant.

6 An over-all picture reveals that with 16 years on one of the busiest benches in Florida, any honest mistake not an abuse of discretion, is excusable on an over-all average of fine service.

7 Personally I have my own conscience to live with, and the facts are not here within my deductions, and I am not afraid to vote my convictions despite any newspaper, newscaster or any individual prejudiced opinion.

I therefore vote for Judge Holt's acquittal with pride and a clear conscience.

BART KNIGHT
Senator, 25th District

It is my firm conviction that the Judiciary of our County and this Great State of Florida is the foundation upon which our citizenry place their confidence and trust.

A judge on the bench at all times must hold his Court as far as possible above censure and reproach and his Court as well as his conduct both on the bench and as an individual must be an example to others.

I am of the opinion that after hearing the testimony in this case the Court of Judge Holt is in disrepute and that the people of Dade County have lost their respect for it.

In view of these facts and that our courts have jurisdiction over liberty, property and very lives, I think Judge Holt has failed to uphold the high tradition and respect expected of his high office. I cannot in good conscience vote for his reinstatement.

JAMES E. CONNOR
Senator, 9th District

In explanation of my vote against a conviction of Judge Holt, I give the following:

As to Article I (a) Accept favors from attorneys: Items 1 thru 7 of the b/p show small favors that one friend might do for another, without even attempting to show any bad motive, or that the same had any effect upon any action of the Judge in his capacity, as Judge, nor were such favors of such nature as to lead to a reasonable assumption of reciprocity on the part of the Judge in his official capacity. Further, as to the trip to Haiti, it was proven that Holt paid his share of the cost.

(b) The evidence conclusively shows that Judge Holt appointed persons as agents of the Court because of their ability as known to the Judge, and that all of such appointments met with the approval of the affected parties. It wasn't necessary for the Judge to select an enemy in order to avoid criticism. Part of the charges were abandoned by the State. The State offered no evidence as to the unreasonabless of the fees.

(c) The borrowing of money from an attorney is not a recommended practice, but in the present instant, nothing was shown from which it could be induced that wrong doing existed. The loan was repaid, and no judicial favors granted as result of the loan.

(d) The State failed to offer any testimony from persons having a general knowledge of fees in the Miami area, as to whether any fees were excessive, but merely related incidents as to amounts. From the evidence as to the amount of work done, as shown by the Defendant, it could be assumed that such fees were liberal but not excessive. As to whether any fees were necessary, in all the estate cases, the same were originally instituted by members of the families, and where the estates were partly in Florida and partly in other states, and a large portion of the Court fight in Florida, as in the Stengel case, was for the purpose of jockeying, for position, relative to the Half Million Dollar estate up north, the reasonableness of the fees in such case cannot be based solely upon the Florida property. A good many of the fees complained of were agreed to by the parties submitting to the Court. Very reputable Lawyers testified in behalf of the defendant that such fees were reasonable and necessary. When appeals were made to the Supreme Court, Judge Holt was affirmed, except in one case. In the other cases complained of, the same can still be appealed, but no effort made to appeal. As to the Kurlan matter, he proved to be a specialist in the field of receiverships. He was requested by the attorneys in the largest of the receiverships because of his ability, and his fees agreed upon by the attorneys as to what was reasonable. This testimony was produced by the defendant and the state did not attempt to rebut it.

(e) Accept gifts from attorneys: These were so small as to be ridiculous as any ground for impeachment.

(f) As to violations of the Code of Ethics: Considerable time was devoted to the drunken condition of the Judge on the night of the Dodge Party. Parties testifying for the state as to the condition of the Judge on that night were at the most, questionable as to character, and one witness proven to be false by a recording of his own voice, whereas the Defendant had men of well known and good character including a U. S. Federal Judge and a Circuit Judge, who testified that the states witnesses had to be in error. Further, reputable police officers and Doctors testified that he was not drunk at the time of his accident. The evidence does show that he had drunk some form of alcohol earlier in the evening. The state did not attempt to explain the whereabouts or doings of Judge Holt between the time he left the Dodge Party and the accident, some two hours later. The testimony of defendant and his witnesses as to being in a restaurant was neither denied nor rebutted by the state, and so must be accepted as true.

For the above reasons, I believe that Judge Holt may have been indiscreet to some extent in his personal habits, but not sufficient to bring his Court into disrepute, and insufficient to justify a conviction, accusations and trial of this nature, regardless. of how true or false such accusation, have affected Judge Holt's standing as a Judge, but I do not feel that all the criticism was justified and we are not trying this case on the question of what effect this trial will have in the future, but solely upon the evidence produced at the trial.

D. M. JOHNSON
6th Senatorial District

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I move you, sir, that all original records of Dade County, Florida, be returned to Dade County - - all those records that were filed in evidence here - - that they be returned to Dade County.

CHIEF JUSTICE TERRELL: You have heard the motion, gentlemen. All in favor of it let it be known by saying "aye."

(All those in favor of the motion so voted).

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes against the motion).

CHIEF JUSTICE TERRELL: The motion is adopted.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: I do now move you, sir, that the Senate adjourn.

CHIEF JUSTICE TERRELL: Sine die?

MR. HUNT: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Mr. Hunt.

MR. HUNT: May I not interpose the question as to whether or not a formal judgment of acquittal is not in order?

CHIEF JUSTICE TERRELL: Yes. Somebody moved that it be entered and I have it already prepared.

SENATOR KNIGHT: I so move you, Mr. Chief Justice.

SENATOR BELSER: I second the motion.

CHIEF JUSTICE TERRELL: I thought it had been already moved and adopted.

MR. HUNT: No sir.

SENATOR DAVIS: The motion has already been adopted.

SENATOR BELSER: The impeachment has been voted on but the motion has not been adopted.

SENATOR DAVIS: Mr. Secretary, has the motion been adopted?

SECRETARY DAVIS: Yes, sir. The Chief Justice previously stated that in the absence of any objection a judgment of acquittal would be entered and there was no objection.

CHIEF JUSTICE TERRELL: Here is the judgment that I prepared, that has been followed by the United States Senate. It reads like this, but if you want to qualify it you are at liberty to do so:

"The Senate of the State of Florida having tried George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of the State of Florida, upon the Article of Impeachment exhibited against him by the House of Representatives of the State of Florida, and two-thirds of the Senators present not having found him guilty of the charges contained therein, it is therefore ordered and adjudged that the said George E. Holt be and he is hereby acquitted of the charges of said Articles made in said Court."

MR. HUNT: Very well.

The following Order was entered:

JUDGMENT

The Senate of the State of Florida, having tried George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of the State of Florida, upon the Article of Impeachment exhibited against him by the House of Representatives of the State of Florida, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is therefore

ORDERED AND ADJUDGED, That the said George E. Holt be and he is acquitted of the charges in said Article made and set forth.

Witness my hand this 15th day of August, 1957.

GLENN TERRELL
Chief Justice
Supreme Court of Florida.
Presiding Officer.

Attest:

ROBT. W. DAVIS
Secretary of the Senate.

SENATOR DAVIS: Mr. Chief Justice.

CHIEF JUSTICE TERRELL: Senator Davis.

SENATOR DAVIS: If there is nothing else before the Senate, I move you, sir, that we do now adjourn, sine die.

CHIEF JUSTICE TERRELL: You have heard the motion, gentlemen. All in favor let it be known by saying "aye."

(All those in favor of the motion so voted).

CHIEF JUSTICE TERRELL: Opposed, "no."

(There were no votes against the motion).

CHIEF JUSTICE TERRELL: The motion is adopted.

Whereupon, at 3:20 o'clock, p.m., Thursday, August 15, 1957, the trial of the Honorable George E. Holt by the Senate of the State of Florida was concluded, and the Senate, sitting as a Court of Impeachment, stood adjourned, sine die.

CERTIFICATE

THIS IS TO CERTIFY that, as Secretary of the Senate of the State of Florida, during the proceedings of the Senate, sitting as a Court of Impeachment, for the trial of Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida, I have faithfully and impartially performed the duties assigned me.

I FURTHER CERTIFY that, the foregoing pages numbered from 7 to 515, both inclusive, are and constitute a complete, true and correct record of the proceedings of the Senate of the State of Florida, sitting as a Court of Impeachment, July 8, 1957 to August 15, 1957, both dates inclusive.

In completing my work for the Senate, sitting as a Court of Impeachment, I desire to extend to the Members, Officers and Attaches of the Senate, Managers on the part of the House of Representatives and to Counsel, my sincere thanks for the many courtesies extended, and the splendid cooperation given me.

ROBT. W. DAVIS
Secretary of the Senate

Tallahassee, Florida
August 15, 1957

ADDENDA TO TRANSCRIPT

On the 14th day of August, 1957, during the testimony of the witness, John Bunten, counsel for the Respondent exhibited for identification two Audograph recordings. Later, during the course of the hearing, Respondent's counsel produced a typed transcription of said Audograph recordings.

These transcriptions were referred to during the testimony of the witness Bunten and of the witness Paul A. Louis, and quotations therefrom were used during the cross examination of the witness Louis. At the conclusion of the hearing counsel for Respondent furnished to the Reporter copies of said transcriptions, and the same are copied below.

ADDENDUM NUMBER ONE

Sunday, 12:15 August 4th:

Yes sir.

Mr. Louis, this is John Bunten.

Yes sir, how are you Mr. Bunten? I imagine you had some company at the time.

When you called, the man in question was here then.

What's that guy's name?

Roper.

Well, as I explained to you, Mr. Bunten, Judge Hunt is unavailable. When I say unavailable, I can't even get in touch with him you understand, until about 4:30. Apparently, between you and me, I think he's down on the keys relaxing. So the only problem, so naturally, I have only done a little investigative work for the judge. When I say for the judge, I'm talking about Judge Hunt. I'm fairly familiar with aspects of the case, but I couldn't speak for him, but I could tell you that naturally they could only expect you to tell the Senate what you know, and that's all you're gonna tell, if you are called on the thing, but we would know what you do know, period. You understand?

Well, as I told his daughter—I didn't give this man any information at all. He's going to contact me in the morning.

Is that right?

He gave me his card and the Tallahassee phone number, and so forth and so on, and according to him he thinks this is a very large issue in the case. Kurlan testified in the past week and so on, and Judge Prunty testimony is the exact opposite and everything, and they made a big issue out of this at once, so I gave him all the information I have and the names of all the boys that worked for me that night that were there.

I see.

I don't know how many of the boys actually saw what occurred when the judge left. It wasn't an extremely busy time. I know there weren't over two parties free then, that occurred and and I had to send for the judge's car.

I see, you acted—as I understand it you are more or less, somebody gives a swanky party, they call you and you take care of everything, is that the idea, the catering, drinks—

No catering. Messages,—primarily it's all the outside operation, parking the cars, showing the people what door to use, where the party is, and everything of that sort.

I see, now had this fellow ever contacted you before, Roper?

No.

This is the first time anybody ever contacted you in this whole case, huh?

Yes, I told Hunt's daughter—the information that I, and I told Hunt's daughter I had had it—it had been in my possession and in my memory all the time but I didn't —I saw no reason to get involved in it myself. What I would testify if I was subpoenaed and told the truth, would be very detrimental.

What is that, what?

That he was absolutely stone drunk, he couldn't walk. This man and Judge Prunty carried him to the station wagon and he slumped, he couldn't even sit on the seat, he fell on the floor.

Boy, that's different than Judge Prunty's testimony up there isn't it?

Yes, it is. As I said I have no ax to the grind either way. If I'm going to be driven into it, why didn't know which way I'd go.

Well, of course, you can't, if they subpoena you, you've got no choice. You can't avoid that—does this Chap, Roper, ok you told me, of course I may be wrong, you correct me if I'm wrong—but you said when he called you up, he told you that he would see that all your expenses and that you'd be taken care of if you go on up there.

That's right. We talked over the phone, it was very sketchy, but here he told me that of course, I don't know what difference it makes, I know very little about any legal aspects of the trial or anything else, but he said they would—if I would voluntarily go to Tallahassee, they would have me subpoenaed there rather than subpoena me here, and then go up.

I see.

What the difference is, I don't know.

What did he say, did he say anything about taking care of you as far as expenses up there or anything like that?

Well, he definitely said that everything would be taken care of, and I would be well taken care of.

Did he indicate any amounts or anything?

No, he gave me the card with the Tallahassee number on it, his hotel there and said that he would notify me in the morning and if I, if my memory got any better, and if I wanted to get in touch with him I could reach him, that he would stop by or phone me in the morning before he left, he's taking the morning flight out of here.

Well, of course I can't speak for you know, the judge—

That's why I've been trying to get ahold of either Judge Hunt or Judge Holt. Judge and Mrs. Holt, I don't know if I have ever worked a party or for Mr. Hunt, I couldn't say that—I just know them by name.

I see, well Mr. Bunten, did Roper indicate about sending you a plane ticket or anything? When he said he was going to take care of you?

If I requested it.

He said he would send you a plane ticket?

If I would request it.

I got you. Well I'll tell you, you gonna be home this afternoon or anything?

I'll be home all afternoon.

Well, I'll try to get Judge Hunt to get in touch with you and if not, I will tell you what he says. And your number is MU80321. Is that correct?

Right.

All right Mr. Bunten, thank you.

ADDENDUM NUMBER TWO

BUNTEN

Tues. Aug. 6,
Approx. 9:00 A.M.

PAL Hello.

JB Mr. Louis?

PAL Is this Mr. Bunten?

JB That's right.

PAL Hey, how are you Mr. Bunten, they told me you called me last night.

JB Yeah I tried to get a hold of you, I didn't hear from you yesterday, evidently you didn't get ahold of the judge huh?

PAL Well, I tell you, when I got ahold of the judge, I got ahold of him about 6:15, just when he was getting ready for that 7:30 plane to Tallahassee. I managed to catch him at his office and I told him, you know, that you had called up, and the gist of your conversation was that you had never been contacted before in this thing, but that you did have this information. And so he asked me to send him a letter up to Tallahassee, which I did do, and I haven't heard from him, cause I sent him the letter yesterday, see?

JB Well I heard from 'em.

PAL You mean you heard from Judge Hunt?

JB No.

PAL You mean you heard from Tallahassee?

JB That's right.

PAL What did they do, send you a subpoena?

JB That's right.

PAL Well, there's nothing you can do except go on up there and tell the truth, but, when did they tell you to appear?

JB First flight out of here.

PAL Today?

JB Yeah.

PAL Is that right? Well, there's nothing you can do about that. If you are up in Tallahassee you might contact Judge Hunt.

JB I don't know if that would be the wise thing to do.

PAL Well, see there's nothing wrong with talking to attorneys or even talking to investigators, that's the law, the law says that's the duty to speak to the prospective witnesses to find out what they know. So there's really nothing wrong with that, it's the duty of every attorney to speak to every prospective witness, a potential witness.

JB Well, they're making me take another boy up, too.

PAL Is that right, what's the name of the man they're going to take up?

JB Hibbs, Ray.

PAL Ray Hibbs?

JB Yeah.

PAL Well - -

JB See, I was the only one that could tell, fact I still am the only man that can tell everybody that worked that party with me, and that was what he wanted the other day, said he wanted all the records, how many boys I had, I told him roughly how many I had, but I didn't give him any names see, and there's no way in the world that they could ever track that down, because the checks that I received for payment for that party is made to me. I pay the boys, even Mr. Dodge knows that I contract for parties, but he doesn't especially know how many - - who was there or how many boys I have or anything else, I just contracted for it on a flat fee and that was it, he didn't know anybody, so - -

PAL Well, is this boy, what's his name Hibbs?

JB Yeah.

PAL Is he going up with you?

JB Well, that's what it is yeah.

PAL Did they send you down tickets and everything?

JB Well, yeah, the man just called - - I just found out about it, the man just called me on the telephone and told me it would save a lot of time and trouble if I would give him the name, because I was subpoenaed and he was going to drop my airplane ticket off within the hour, and make reservations on the first flight out, and they would probably get us back here no later than tomorrow. So, if we would like to avoid a lot of going up and coming back and everything else, why he said if you will give me the name of one more man that we think we have two of them, why he said we - - the one is not here, he's in Boston, so I gave him Hibbs name and he said well he had a ticket - - had money for a ticket for him, and the two of us could go up there.

PAL How you spell that guy's name?

JB Hibbs

PAL And what's that story, was he there too?

JB Well, I don't, he was there, yes, at the party, but I don't know if he was right there when the judge came out, but as I said it wasn't too busy and out of the seven there were probably maybe four boys back there with me that saw everything that occurred, but the other two or three were probably getting a car, or having something to eat or something like that, I keep all of them right there all the time.

PAL What time did the judge come out, do you remember?

JB Oh it was fairly early, I would say 9:00.

PAL Is that right? He came out early huh? Was he driving?

JB No he had a colored boy driving. This investigator, I don't know if it would be any help to Hunt to try the case or anything, but they tell me, this investigator that was out here, he volunteered a lot of information.

PAL You mean out there Sunday?

JB Sunday, yeah, that's right. He claims they found the colored boy, they said he had been missing for about a year and they finally ran him down.

PAL Well, what did he say about the colored boy, the colored boy going to say the same thing?

JB Well, you know he didn't go any farther than that.

PAL Yeah, well of course I question that man's integrity, I happen to know a little bit about him, he's got a bad reputation - - but you have to tell what you know and that's all, I mean nobody can expect you to tell anything different, and as I say, as unpleasant as it may be to you, you are going to have to tell the facts what you know about this thing if they subpoena you up there, but I mean really there's nothing they can do on the thing. If they give you a subpoena you've got to go.

JB Yeah, I realize that.

PAL There's absolutely no way to get out of it.

JB Well I just wanted to know what Hunt had said or anything, - - if I have an opportunity, I probably won't, because the way he talked, he would take us right on the stand I guess this afternoon, or in the morning, this afternoon I wouldn't have any - -

PAL I question that, cause - -

JB He said don't pack any clothes or anything, just overnight, he said you will be back here tomorrow anyway, so he better not send me up there without a razor or anything else.

PAL You better take my advice and take a razor. You better take a couple of extra shirts along too.

JB You think so.

PAL Well as I understand it, I may be wrong, the defense is still on you see, and apparently this chap, what's this guy's name?

JB Dougherty, I think, he said he works for the State Senate.

PAL His name was Dougherty?

JB Doutrie, or Dougherty - -

PAL Mike Dougherty? Well, he's not the same one that came to see you before?

JB No, that's right.

PAL What's the name of that guy that came to see you before?

JB Roper.

PAL Roper, that's right. You mean Dougherty is the one that told you don't take any shaving equipment and stuff huh?

JB Yeah, he's the guy that just called me on the phone about 7 or 8 minutes ago.

PAL He said he worked for the State Senate?

JB Yeah. He said he received the subpoena this morning, one for me, and one for a party unnamed, and of course, had to get the name, and he's the one that said we should get the first flight out to Tallahassee and we'll put you right on the stand and maybe we'll have you back tonight, he said you'll be back tomorrow evening at the latest.

PAL Well, that's up to you, if they give you a subpoena you've got to go period, you understand and I mean you don't have any choice about it, I merely say that if you go today you better take along a bag with you.

JB I will, I wasn't planning on it, - -

PAL Because you might be spending some time in Tallahassee.

JB Well, if I get a chance when I get up there, - -

PAL Well, that's right, it doesn't make any difference - -

JB You have the address where Judge Hunt is staying?

PAL Yeah, at the Duval Hotel.

JB Duval?

PAL Yes sir.

JB Well, I'll try to get ahold of him if I have an opportunity before I - - before we get shuttled in on it.

PAL Right.

JB O.K. then, thank you.

PAL Right. Thank you.

APPENDIX

B R I E F

By

CHIEF JUSTICE GLENN TERRELL

GOVERNING IMPEACHMENT OF HONORABLE GEORGE E. HOLT, CIRCUIT JUDGE, ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, AS AUTHORIZED BY SEC. 29, ART. III, CONSTITUTION OF FLORIDA.

The purpose of this brief is to post the writer on what he conceives to be the general principles of law governing impeachment, to advise counsel for the Managers on the part of the House of Representatives and counsel for the respondent the result of the writer's study and to aid the Senate in appraising its function when sitting as a Court of Impeachment.

The law authorizing impeachment is embraced in Section 29, Article III, Constitution of Florida, and is as follows:

"Impeachment of officers,—The House of Representatives shall have the sole power of impeachment; but a vote of two-thirds of all members present shall be required to impeach any officer; and all impeachments shall be tried by the Senate. When sitting for that purpose the Senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds of the Senate present. The Senate may adjourn to a fixed (day) for the trial of any impeachment, and may sit for the purpose of such trial whether the House of Representatives be in session or not, but the time fixed for such trial shall not be more than six months from the time articles of impeachment shall be preferred by the House of Representatives. The Chief Justice shall preside at all trials by impeachment except in the trial of the Chief Justice, when the Governor shall preside. The Governor, Justices of the Supreme Court and Judges of the Circuit Court shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit under the State; but the party convicted or acquitted shall nevertheless be liable to indictment, trial and punishment according to law."

Revised Article V, Section 17(c) of the Florida Constitution adopted at the general election in November, 1956, effective July 1, 1957, also provides for the impeachment of justices of the Supreme Court, judges of the district courts of appeal, and circuit judges for any misdemeanor in office, the purpose of this section being to bring judges of the District Courts of Appeal within the impeachment provisions of the Constitution.

Section 34, Article III, State Constitution, provides that immediately upon the impeachment of any officer by the House of Representatives, he shall be disqualified from performing the duties of his office until acquitted by the Senate, and the Governor in such case shall at once appoint an incumbent to fill such office, pending the impeachment proceedings. In case of the impeachment of the Governor, the President of the Senate, or in case of the death, resignation or inability of the President of the Senate, the Speaker of the House of Representatives, shall act as Governor pending impeachment proceedings against the Governor.

The corresponding provisions of the Federal Constitution are pertinent to this discussion and are as follows: Section 4, Article II, provides that the President and Vice President and all civil officers of the United States, shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors. Section 2, Article I, Federal Constitution, vests in the House of Representatives "the sole power of impeachment" and Section 3, Article I, Federal Constitution, vests in the Senate the "sole power to try all impeachments." These provisions of the Federal Constitution are pertinent because, as I shall later point out, most of the law governing impeachment trials derives from cases tried by the United States Senate.

Under both the State Constitution as to "any misdemeanor in office" and the Federal Constitution as to conviction of "treason, bribery or other high crimes and misdemeanors," the Senate is clothed with power to try all impeachments. The penalty in case of conviction is "only" removal from office and disqualification to hold any office of honor, trust or profit in the state or in the United States if it be a federal office. When sitting as a court to try impeachments the jurisdiction of the Senate is limited to such cases as originate in and are brought to it by the House of Representatives. Its jurisdiction extends to questions of law and fact, it may prescribe rules for the conduct of impeachment trials and there is no review of its judgment unless it violates some constitutional guaranty. Advisory Opinion, 14 Fla. 289. It is a court of exclusive, original and final jurisdiction. Whether convicted or acquitted, the accused may still be liable to indictment, trial and punishment in the courts of law. Even when convicted and removed from office, the United States Senate has rarely imposed the disqualification to hold any office of honor, trust or profit in the future. In any impeachment trial, the conscience and discretion of the Senate are the sole guides to their judgment and no court will disturb it. No other institution in our jurisprudence is clothed with such unique power.

The institution of impeachment has roots deep in the common and parliamentary law of England, whence came its reason and philosophy. It is said to have originated during the time of William the Conqueror, whose court dispensed justice throughout the kingdom. It was then a criminal proceeding, but during the reign of Edward the First, the High Court of Chancery, the Court of King's Bench, the Court of Exchequer and the Court of Common Pleas were created. The Court of King's Bench was clothed with criminal juris-

diction with the proviso that Parliament have power to review the judgments of all courts.

When Parliament was divided into the House of Lords and the House of Commons, the House of Lords retained jurisdiction to review the judgments of other courts. See Kilbourne vs. Thompson, 103 U. S. 168, 183 and 184. The method of conducting impeachments was not regular until the Statute of I Henry IV, C. 14, under which it was governed by rules of procedure. In its inception all subjects of the crown were subject to impeachment whether they held office or not. The penalty was governed by the enormity of the offense. As time passed, the abuse of official trust in its various aspects became the primary ground actuating impeachment charges and trials.

When the constitutional convention assembled in 1787, impeachment was an institution that had experienced many vicissitudes. The House of Representatives was given the sole power of impeachment and the Senate, who represents the sovereignty of the states, was vested with the sole power to try impeachments. The pattern was extracted from the English model. The requirement that the Chief Justice preside when the President is tried was designed to remove any conflict of interest on the part of the vice-president in the result. In the House of Lords a majority vote was sufficient to convict, but our Constitution, state and federal, require the concurrence of two-thirds of the senators present to convict. This requirement lays a heavy burden on those who prosecute impeachments but experience has demonstrated the wisdom of the requirement. It tends to break down the power of factions when partisan strife, hatred and excitement run rife.

Must impeachment be grounded on an indictable offense? A respectable school of legal thought in this country says yes. Other students of the question contend that while information or indictment may not be the correct criterion on which to ground impeachment, it must contemplate the commission of an offense contrary to the precepts of the common law or one that contravenes some express statute. See 16 Am. L. Rev. 798.

Impeachment under the State Constitution is limited to "any misdemeanor in office." In the Federal Constitution impeachment is limited to "treason, bribery, or other high crimes and misdemeanors." Historically, treason and bribery, the basis of trial and punishment therefor, are well understood in the parlance of the criminal law and are not discussed. Other "high crimes and misdemeanors" were taken from the English parliamentary law where they had a well understood meaning. Under English practice many offenses were impeachable which were not punishable as crimes at common law. The State Constitution does not attempt to define what offenses are contemplated by the phrase, "any misdemeanor in office," neither does the Federal Constitution attempt to define what offenses are contemplated by the phrase "other high crimes and misdemeanors." They are not susceptible of precise definition. "They are generalizations that must be construed to be as broad as the mischief which the process of impeachment was designed to correct," said Mr. Wrisley Brown, Special Assistant to the Attorney General in 26 Harvard L. Rev. 684. See also U. S. vs. Jones, 3 Wash. C.C.R. 209, 215; Ex parte Hall, 1 Pick. (Mass.) 261, 262.

In his well documented article just adverted to, Mr. Brown points out that to determine whether or not an act or a course of conduct is sufficient in law to support an impeachment, resort must be had to the external principles of right, applied to public propriety and civic morality. The offense must be prejudicial to the public interest and it must flow from a wilful intent or a reckless disregard to duty to justify invocation of the remedy. It must act directly or be a reflected influence to react upon the welfare of the state. It may constitute an intentional violation of positive law, or it may be an official dereliction of commission or omission, a serious breach of moral obligation, or other gross impropriety of personal conduct, which in its natural consequence, tends to bring an office or the officer into contempt and disrepute. 1 Curtis Constitutional History of the United States, 481-482; 1 Tucker on the Constitution, 419; Cooley, Principles of Constitutional Law, 178; Foster on the Constitution, 581 et seq.; 1 Story on the Constitution, 5th Ed., Paragraphs 796 to 799; 2 Watson on the Constitution, 1034; Pomeroy, Constitutional Law, 9th Ed., 600 et seq.; Cushings, Law and Practice of Legislative Assemblies, 980 et seq.; Rawll on the Constitution, 290 et seq.; 15 Am. & Eng. Encyc. of Law, 2nd Ed., 1066-1068; 15 Am. L. Reg. 641, 646; Documentary History of the Constitution of the United States; Elliott's Debates; Records of the Federal Convention by Farrand; A Treatise on Federal Impeachments by Simpson and many other authorities.

The law writers generally hold that while the offense must be committed during incumbency in office, it need not be committed under color of office. An act or a course of misbehavior which renders scandalous the personal life of a public officer, shakes the confidence of the people in his administration of public affairs and impairs his official usefulness, although it may not directly affect his official integrity, may be characterized as a high crime or misdemeanor, it may not fall within the prohibitory letter of the penal statute.

In Black, Constitutional Law, 3rd Ed. 138, it is stated that any gross malversation in office, whether or not it is a punishable offense at law, may be made the ground of impeachment. But the power of impeachment is not restricted to political crimes alone. The Constitution provides that the party convicted upon impeachment shall still remain liable to trial and punishment according to law. From this it is to be inferred that the commission of any crime which is of grave nature, though it may have nothing to do with the person's official position except that it shows a character or motives inconsistent with the due administration of his office, would render him liable to impeachment.

On the investigation of impeachment charges against Honorable George W. English, United States District Judge for the Eastern District of Illinois (1925), the Judiciary Committee found that a judge might be impeached for failure to live up to the standards of the judiciary in matters of personal integrity and in the discharge of the duties of his office. Enlarging on this premise, the Committee said:

"Although frequently debated and the negative advocated by some high authorities, it is now, we believe, considered that impeachment is not confined alone to acts which are forbidden by the constitution or federal statutes The better sustained and modern view is that the provision for impeachment in the constitution applies not to high crimes and misdemeanors as those words were understood at common law but also acts which are not defined as criminal and made subject to indictment but also to those which affect the public welfare. Thus an official may be impeached for offenses of a political character and for gross betrayal of public interests. Also, for abuses or betrayal of trusts, for inexcusable negligence of duty, for the tyrannical abuse of power, as one writer puts it, for a breach of official duty by malfeasance or misfeasance, including conduct such as drunkenness when habitual, or in the performance of official duties, gross indecency, profanity, obscenity or other language used in the discharge of an official function which tends to bring the office into disrepute, or for an abuse or reckless exercise of discretionary powers as well as the breach of an official duty imposed by statute or common law." Cannon's Precedents, House of Representatives, Vol. 6, page 779.

This doctrine was materially enlarged on in Hinds' Precedents, House of Representatives, Vol. 3, pages 383 and 739. See also Words and Phrases, Permanent Edition, Vol. 19, page 419, where High Crimes and Misdemeanors is treated, and Vol. 27, same title, page 336, where misdemeanor in office is treated. We also defined "Misdemeanor in Office" as grounds for impeachment under Florida Constitution in In Re Investigation of Circuit Judge (Fla.) 93 So.(2d) 601. So there can be no doubt that a circuit judge may be impeached when his personal conduct becomes such that the public loses respect for and confidence in him.

From this it would hardly seem necessary to say more in support of the thesis that impeachment may lie as well for gross misconduct or abuse of trust as for offenses punishable by statute. As crystallized in the cases, state and federal, the weight of authority is that the abuse of official trust in its many and varied ramifications has been the cardinal vice which formed the pretext, if not the motive, of most of the well considered impeachment trials. It would, therefore, not be unreasonable to assume that since it requires such a broad reach of discretion to deal with the problem, the Senate was clothed with power to exercise it. Then, if the decalogue of official behavior must keep pace with changing moral concepts, as many contend, certainly no political body is better

qualified by training and experience than the Senate to do this.

In 8 Miss. Law Journal, 283, Judge Ethridge of the Supreme Court discusses two theories of impeachment, one the judicial and the other the political theory. The judicial theory, he says, is known by the fact that the law names the offenses for which impeachment may be imposed, the proceedings that must be taken to effectuate it, who may institute it, who may try it, and the penalty that may be imposed. It proceeds on notice and due process, it is ruled by reason, passion is suppressed, and justice should be the goal. The political theory, says Judge Ethridge, proceeds on the premise that the offense on which impeachment is based, may not be specified in the Constitution or the statute, but that those charging and those trying it may convict for anything that is offensive to the ideals of the triers—that anything which, in their judgment, evidences unfitness for holding office, whether connected with official conduct or not, is ground for impeachment if the triers of the cause so decide, that passion rules, reason is suppressed, and political victory is the goal.

The wrongs in the political theory pointed out by Judge Ethridge may be noticeable in some English cases where all subjects were liable to impeachment and punishment was in the discretion of the king. He cites Ferguson vs. Maddox, 114 Tex. 85. 263 S.W 888, which states that impeachment at the time of the adoption of the United States Constitution was an established and well understood procedure in English and American parliamentary law, and that it had been resorted to from time to time in England for 500 years. It was designed primarily to reach those in high places guilty of official delinquencies or maladministration. It was settled that the wrongs justifying impeachment need not be statutory or common law offenses, or even offenses against any positive law. Generally speaking, they were designated as high crimes and misdemeanors, which, in effect, meant nothing more than grave official wrongs. See also Hinds' Precedents of the House of Representatives, Vol. 3, Paragraphs 2001 to 2520.

In this study I have examined every case of impeachment originating under the Constitution of this State, the United States, and in some of the other states. In a few instances they strongly indicate political considerations creeping into them, but in the main they are dominated by the theory that public office is a public trust, that it is a very serious matter to impeach a public officer, that in trying impeachment charges the Senate has been fully aware of its exalted duty, that it must follow the law as found in the Constitution, the common law and the precedents and from them determine the indicia of that which is impeachable. It is only after such a search that the Senate can determine whether or not the articles of impeachment state an impeachable offense, whether or not such charges are sustained by the evidence and thereby adjudicate the questions arising within its jurisdiction. In this as in all other judicial proceedings, justice and fairness are the goals to be attained. The unsavory implications of the word "politics" have not generally controlled the result.

Prior to the case before us there have been three attempts at impeachment under the Constitution of Florida. The first case was against Circuit Judge James T. Magbee of the Sixth Judicial Circuit (Tampa). He was impeached two days before the final day of the 1870 session of the Legislature. The Senate adjourned on schedule without taking action, and continued his trial to the 1871 session of the Legislature. In a special session in May, 1870, the Senate organized as a court of Impeachment but at the same session the House of Representatives moved discontinuance of the articles of impeachment, in conformity with which the Senate, sitting as a court of impeachment, did in January, 1871 dismiss the articles of impeachment before taking any testimony. Some of the charges against Judge Magbee do seem a little bit frivolous, one of them being that he charged his stamps, pipes and smoking tobacco to the state, but others point to a low concept of his judicial position.

The second attempt to impeach a state officer in Florida was lodged against Governor Harrison Reed in February, 1872. The senate organized as a court of impeachment, but adjourned without a trial. At a special session in May, counsel for Governor Reed moved the Senate sitting as a court of impeachment to acquit and discharge Reed on the ground that the Senate adjourned its regular session without proceeding to try him, that the special session of the legislature had no jurisdiction to try him and that his term would expire before the next regular session of the legislature. The motion to discharge was granted by the Senate May 4, 1872, and Governor Reed was discharged the same day. The case in its initial stages was fully and very interestingly discussed in an Advisory Opinion to the Governor (14 Fla. 289.)

The third attempt to impeach a state officer in Florida was lodged against State Treasurer C. B. Collins in 1897. The articles of impeachment were duly transmitted to the Senate, the Senate organized as a court of impeachment and set May 28, 1897, as date for trial. Rules of procedure were adopted, and the court of impeachment adjourned to May 31. On the last named date, the court adjourned to June 3, on which date the Governor advised the House of Representatives that respondent Collins had resigned, when the managers requested that they be permitted to withdraw the articles of impeachment. On June 4, the House of Representatives adopted a resolution withdrawing the articles of impeachment and discharging the managers. The Senate sitting as a court of impeachment then adjourned sine die.

A review of these three impeachment proceedings shows that in each case the Senate met and organized as a court of impeachment, adopted rules of practice and procedure, service of process was made, but the proceedings were terminated before any evidence was taken. The Magbee and the Reed cases were instituted under the Constitution of 1868, but the basis of impeachment "any misdemeanor in office" was the same as was later included in the Constitution of 1885, under which the Collins case was brought. The three cases having been terminated before trial or before any important questions were settled, they give us no assistance here.

In Hinds' Precedents of the House of Representatives, Vol. 3, supplemented by Cannons' Precedents of the House of Representatives, Vol. 6, is found the most comprehensive compendium of information yet published on the subject of impeachment. Ten cases are listed in these two volumes. A transcript of the trial of Judge Halsted Ritter in the United States Senate was secured and studied, so in all, the United States Senate has tried eleven impeachment cases as follows: William Blount, United States Senator from Tennessee in 1797; John Pickering, United States District Judge from New Hampshire, 1803; Samuel Chase, Associate Justice of the Supreme Court of the United States in 1804; James H. Peck, United States District Judge from Missouri, 1830; West H. Humphries, United States District Judge, Tennessee, 1862; Andrew Johnson, President of the United States, 1868; William W. Belknap, late Secretary of War in 1876; Charles Swayne, United States District Judge from Florida, in 1904; Robert W. Archbald, United States Circuit Judge as member of the Court of Claims in 1912; Harold Louderback, United States District Judge, Northern District, State of California, in 1933; Halsted Ritter, United States District Judge from Florida in 1936. In addition to the foregoing cases which resulted in a trial, Hinds and Cannons Precedents recite more than forty cases that were investigated by the House of Representatives but respondents were discharged for insufficient reasons to warrant impeachment. They have been examined but they are not discussed.

Of the eleven impeachments tried by the United States Senate, eight were leveled at the federal judiciary, four of which resulted in conviction. Those not leveled at the judiciary are historically interesting but are not discussed. The cases against Judge Pickering, Judge Humphries, Judge Charles Swayne, Judge Archbald and Judge Ritter will be discussed insofar as necessary to show their relevance to the case before us.

Judge Pickering was charged in four articles, three of which related to statutory delicts and the fourth to serious personal delinquencies while on the bench. Judge Pickering did not answer, appear in person, or by counsel, but his son was permitted to appear and present evidence showing that his father was mentally incompetent when he was alleged to have committed the charges. The evidence tended to show that if the elder Pickering was mentally irresponsible, it was due to habitual intemperance. He was convicted on all articles but the disqualification to hold any office of honor, trust or profit under the United States was not imposed.

Judge West H. Humphries was charged in seven articles with inciting revolt or rebellion against the country, that he supported the ordinance of secession, conspired to oppose the authority of the United States by force and arms, did not perform the functions of his office and as judge confiscated property of citizens of the country. He did not appear or answer the charges. The trial resulted in his conviction on all charges except that part of the sixth article charging wrongful confiscation of property of citizens of the United States to use of the Confederacy. On unanimous vote of the senate, respondent was removed from office and disqualified to hold any office of honor, trust or profit under the United States. This case is of doubtful value because of the stress of circumstances under which it was prosecuted.

Judge Swayne was tried under twelve articles of impeachment. The first three articles charged that he obtained money from the government under false pretenses by charging the maximum per diem allowance while holding court out of his district when, in fact. he was entitled only to "reasonable expenses", which did not amount to the maximum. Articles four and five charged him with using a private railroad car without paying for it when it was in the hands of a receiver for the railroad, appointed by Judge Swayne, said expenses being charged against operation costs by the receiver and allowed. Article six and seven charged him with failure to reside in his district, as required by law. The last four articles charged him with misbehavior and abuse of judicial power in maliciously and unlawfully punishing certain attorneys for contempt.

The charges under the first three articles were made criminal offenses by an act of Congress. Failure to reside in the district was expressly declared to be a "high misdemeanor" by Act of Congress. The managers contended that the contempt citations and the punishments inflicted were (1) either unlawful because the acts of the attorneys were not within the scope of the law defining and limiting the power to punish for contempt, or if within the law should have been such as to require indictment and trial by jury or (2) even if Judge Swayne had the power to punish the attorneys, he abused his discretion by inflicting cruel and unusual punishment. The contention was that under either view, he committed an impeachable offense. He was acquitted of all charges.

The case against Judge Robert W. Archbald has been said to present the best application of the remedy by impeachment in the books. There were thirteen articles of impeachment proffered. Articles 1, 2, 3, 5 and 6 charged the use of the judge's position to coerce concessions or favors from railroad companies having litigation before him; article 4 charged secret correspondence between the judge and counsel for a railroad company about the merits of a case pending before him. Articles seven to thirteen charged misconduct while Judge Archbald was sitting as a United States District Judge immediately before he was elevated to the Circuit Court. These charges related to designation of a railroad attorney to be jury commissioner and other related matters. Article thirteen was a general charge that summarized all the others in a general course of misconduct.

Respondent's answer consisted of a demurrer to each article including a special traverse, except as to article six and thirteen. The pleas and the answer admitted the primary facts but denied wrongful intent. Replication by the house managers alleged sufficiency of the articles in law and fact. Respondent challenged the jurisdiction of the senate to consider charges seven to twelve on the ground that they related to alleged acts committed prior to his appointment as circuit judge. It was stubbornly contended that the acts charged and proven did not establish impeachable offenses. Trial resulted in conviction on the first, third, fourth, fifth and thirteenth articles. He was removed from office and disqualified to hold any office of honor, trust or profit under the United States. The latter disqualification was imposed by a vote of less than two-thirds of the senate. The significant deductions from this result are (1) the articles charging offenses committed while respondent was a district judge failed of conviction except for the broad general charge in Article XIII, which embraced charges contained in the first twelve articles; (2) none of the articles charged an indictable offense or violation of any written law; (3) none of the acts charged would have been culpable if committed by a citizen; (4) judgment removed from controversy the idea that judges are impeachable only for indictable offenses.

Some aspects of the case against Judge Halsted Ritter were similar to that against Judge Archbald. He was impeached on seven articles, was acquitted on six, but was convicted on the seventh which, among other things, amounted to a "general misbehavior" charge.

A study of the federal cases settles beyond question that impeachment will lie not only for offenses punishable by statute, but that it may be predicated on a course of conduct that reveals unfaithfulness to trust or which brings the office or officer into discredit or displaces public confidence with public distrust.

Much ink has been wasted controverting the question of whether an impeachment trial is judicial or political in character. In external form and conduct it is unquestionably judicial. The respondent is entitled (1) to be informed of the nature of the charges against him; (2) he is entitled to the aid of counsel; (3) to be confronted with the witnesses against him; (4) to compulsory process of witnesses; (5) he cannot be compelled to be a witness against himself; (6) the rules of evidence observed in court trials are generally applicable; (7) a reasonable doubt of guilt must result in acquittal; (8) there must be showing of wrong intent, while one may be presumed to intend the necessary results of his voluntary acts, it is only a presumption and may not at all times be inferable from the act; (9) precedents have due weight and every other constitutional guaranty is accorded respondent.

In every impeachment trial conducted by the United States Senate, the Senators and counsel spoke frequently of the Senate as a "court." In the Archbald trial it was called a "court" more than 100 times. In preparing the rules for impeachment it was frequently spoken of as "a court," "or high court of impeachment." In the journal of the House and Senate, when dealing with impeachment, the Senate was spoken of as "a court." When Chief Justice Salmon P. Chase presided at the trial of President Johnson, he spoke of the Senate frequently as "a court," the constitutional provisions heretofore adverted to, contemplated the Senate as "a court" and lastly, when once acquitted in impeachment trial, respondent can not again be jeopardized for the same offense. So it matters not what we call it when the Senate sits in impeachment. It is "a court" created by the Constitution for that specific purpose and is governed by "rules of court."

Now it is perfectly apparent that impeachment is directed to a political right, that the office held by the accused is a political incident, that if successful the impeachment imposes a political forfeiture and is designed to suppress a political evil but the judgment is reached by the judicial process and is the product of judicial scrutiny. In this I do not overlook the fact that in each step in an impeachment trial, the Senate is a law unto itself and that the right of challenge for cause may not exist, but judgments in impeachment trials have generally been actuated by the ingredients of fair trial. In fact fair trial and a just judgment is so dominant in our philosophy that no one, unless he be actuated by evil propensities, can think of the Senate proceeding otherwise than to a just conclusion. A study of the eleven impeachments tried by the United States Senate amply demonstrate this.

Is an impeachment a criminal proceeding governed by the rules of criminal procedure? In its initial aspect it was considered a criminal trial but through the ages its scope has been very much confined and its purpose restricted. In Florida it is effective only as to "any misdemeanors in office" and only the governor, administrative officers of the executive department (cabinet), Supreme Court Justices, District Court of Appeal Judges and Circuit Judges are subject to impeachment. As to all other officers, the same result is accomplished by suspension by the governor for "malfeasance, or misfeasance or neglect of duty in office, for the commission of any felony or for drunkenness or incompetency." These grounds of suspension which must be agreed to by the Senate contemplate that an officer may be suspended for indictable offenses or for gross delinquencies or abuse of trust. Grounds for impeachment of higher officers would certainly not fall in a more restricted category of offenses.

Since the sole result of a successful impeachment is removal from office and the criminal aspect of it is reserved by the Constitution for prosecution in the criminal courts, it necessarily follows that an impeachment trial is more in the nature of an ouster proceedngs or an inquest into the conduct of the officer to whom it is directed, than any other proceeding known to the law. In the discussion of the judicial aspect of impeachment, it is shown that it still retains some of its criminal attributes. The criminal aspect is also retained in other provisions of the Constitution wherein it provides that the president shall have power to pardon and grant reprieves for offenses against the United States except in case of impeachment and that the trial of all crimes except impeachment shall be by jury in the state where the crime was committed.

The history of English and American law shows conclusively that "any misdemeanor in office," for which one may be impeached, has a much broader scope than "criminal misdemeanors." In fact it is clothed with criminal and a social meaning and when used in the latter sense, as frequently done in England and in this country, it was not limited to indictable offenses but included as well those involving forfeiture of good faith. In re Investigation of Circuit Judge (Fla.) 93 So. 2d 601. The cases heretofore listed that were tried by the United States Senate amply demonstrate this and the following English cases support the same thesis: Earl of Suffolk, George Benjamin, Sir Richard Gurney, Earl of Northhampton et al., Archbishop Land Henry Sacheverell, and Earl of Macclesfield, all of which are discussed in Howell's State Trials.

From these observations I cannot escape the conclusion that impeachment is a proceeding singled out by the Constitution to reach a peculiar class of offenses, peculiar to a limited class of high officials, and because of its peculiar fitness the Senate was clothed with power to try such offenses. While it has criminal aspect, it is judicial in character, the Senate sits as a court when trying an impeachment and it may lie for an indictable offense as well as for gross official misconduct or abuse of trust when such abuse of trust is so flagrant as to forfeit public confidence and respect.

Now, all that has been said could be crystallized in this - - in our country public office is still a public trust and the higher the office, the more serious and sacred the trust; in the lower echelons violation of the trust is ground for suspension by the governor; in the higher echelons it is ground for impeachment by the House of Representatives; in either event the Senate is a judicial umpire or court of impeachment before which the charges against the accused must be established to its satisfaction.

ORGANIZATION OF THE SENATE FOR THE HOLT TRIAL, AND QUESTIONS THAT WERE SETTLED.

JULY 8TH TO AUGUST 15, 1957.

The brief preceding this discussion was prepared and distributed among the members of the Senate before the impeachment trial of Honorable George E. Holt. Its purpose is fully expanded in the first paragraph. I studiously avoided discussing any question that might arise at the trial, but limited it to the general law governing impeachment. This discussion will be limited to questions that arose in and were answered by the Senate during the trial, the record of which will be found in the Senate Journals of July 8th to August 15th, 1957.

The Senate was called to order by President W. A. Shands at 11:00 A.M., July 8th, 1957. The Rules Committee, composed of Senators Davis, Clarke and Rawls, appointed by President Shands, made its report, and the rules recommended by it to govern the Senate, when sitting as a Court of Impeachment, were adopted. On motion of Senator Davis, the Senate proceeded to organize as a Court of Impeachment to try Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida, on Article of Impeachment preferred against him by the House of Representatives and exhibited in the Senate, Thursday, May 28, 1957, pursuant to House Resolutions numbered 1942, 1945 and 1947, adopted at the regular session of the Legislature, 1957. See Journals of the Senate, Tuesday, May 28, 1957 and Saturday, June 8, 1957.

On motion of Senator Davis, the President of the Senate appointed Senators Johnson, Eaton and Rogers as a committee to inform Honorable Glenn Terrell, Chief Justice of the Supreme Court, that the Senate was ready to organize as a Court of Impeachment, and request that he attend, as required by the Constitution, for the purpose of presiding over the Senate during its deliberations in the trial of Honorable George E. Holt, Circuit Judge, Eleventh Judicial Circuit, on Article of Impeachment exhibited by the House of Representatives.

The Chief Justice, accompanied by the committee, appeared promptly before the Senate with Honorable Campbell Thornal, a Justice of the Supreme Court, and issued the following announcement:

> "Gentlemen of the Senate, in obedience to notice by your committee, I attend the Senate for the purpose of joining with you in forming a Court of Impeachment for the trial of Honorable George E. Holt, Circuit Judge of the Eleventh Judicial Circuit of Florida, and I am now ready to take the oath",

which was administered by Honorable Campbell Thornal, a Justice of the Supreme Court of Florida. The Senate having been resolved into a Court of Impeachment, the Chief Justice then administered the oath to all members of the Senate who were present. The Chief Justice then administered the oath to Honorable Robt. W. Davis and Honorable LeRoy Adkison, who had been designated Secretary and Sergeant-at-Arms of the Senate, respectively. The Sergeant-at-Arms then made proclamation opening the Senate as a Court of Impeachment.

On motion of Senator Davis, the rules of practice and procedure adopted by the Senate for its governance when sitting as a Court of Impeachment, were duly adopted. The Secretary of the Senate then notified the Managers for the House of Representatives, Honorable Thomas D. Beasley and Honorable A. J. Musselman, Jr., that the Senate was organized as a Court of Impeachment and ready to receive them to try Article of Impeachment exhibited by the House of Representatives against Honorable George E. Holt, who, having waived service of process and advised the court of his address at a local hotel, was advised by the Secretary of the Senate that the Senate was ready to receive him.

The Managers, for the House of Representatives appeared promptly at the bar of the Senate, accompanied by their counsel, Honorable W. D. Hopkins and Honorable Paul Johnson. Honorable George E. Holt also appeared promptly at the bar of the Senate, accompanied by his counsel, Honorable Richard H. Hunt, Honorable William C. Pierce, and Honorable Glenn Summers.

By direction of the Chief Justice, the Article of Impeachment against George E. Holt was read by the Secretary of the Senate. Respondent George E. Holt promptly entered his appearance and moved to strike and dismiss the Article of Impeachment. The Managers for the House of Representatives filed their bill of particulars. Arguments were heard on the motion to strike and dismiss and Respondent, having objected to filing the bill of particulars, adversary arguments were heard on that question. At the conclusion of said arguments, the Senate adopted a motion by Senator Neblett, authorizing the bill of particulars submitted by the Managers on the part of the House of Representatives to be filed and made a part of the Article of Impeachment, the vote being 25 to 13. The motion to strike the Article of Impeachment or to refer back to the House of Representatives was then considered and by vote of 36 to 2 was denied. The Senate then, on request of counsel for Respondent and by agreement of the Managers, took an adjournment to July 22nd to enable counsel to prepare for trial.

The effect of overruling the motion to strike and dismiss the Article of Impeachment and admitting the bill of particulars to the record in the cause was to require Respondent to answer, which he did on July 22, 1957. The answer denied the material allegations of the Article of Impeachment and joined issue on the pleadings. At this point, the Managers proffered an amended certificate to the bill of particulars to which respondent objected. The Chair ruled the certificate proper to be filed, but after considered discussion the matter was passed and was not again called up. I do not think failure to act on the certificate by the court was material, since the Senate had approved the bill of particulars and the amended

certificate did nothing more than tie the bill of particulars to the Article of Impeachment. A bill of particulars did nothing more than expand or clarify the Article of Impeachment. Even if the Article of Impeachment when considered alone could be challenged, the bill of particulars cured the defects and at the trial Respondent was accorded every constitutional guaranty.

July 22, 1957, the Chief Justice spent the afternoon in pretrial conference with the Managers and their counsel and Respondent and his counsel. Result, agreement was reached with reference to introduction of much evidence, particularly that which was documentary. Other aspects of the trial were considered and much time of the Senate was saved in so doing. I have found no showing of a pre-trial conference in any other impeachment proceedings. I recommend same.

Another significant development of the Holt trial was the action on the part of the Senate agreeing to pay the per diem and traveling expenses of the witnesses for both the Managers and Respondent. It was brought to the attention of the Senate by Respondent's counsel that the United States Senate had followed this practice for the past fifty years. On this showing, the Florida Senate adopted the same practice in the Holt case. I think the more logical support for the rule is that in all criminal prosecutions, the defendant is entitled to trial in the county where the offense occurred. Under this rule, Judge Holt would have been entitled to trial in Dade County, but since the facilities for an impeachment trial did not exist in Dade County, and it became necessary to try the cause in Leon County where facilities did exist, necessitating the Respondent to bring his witnesses to Leon County, thereby imposing a heavy burden on him, assuming the cost of his witnesses could be justified on that ground. In some other states, I find that the legislature has adopted this practice with rigid restrictions, but Florida has not done so and being so the Senate was authorized to adopt its own rule in the matter.

Another significant development of the Holt trial was the adoption of a resolution imposing a fine of $50 on each member of the Senate or any employee thereof for failure to attend its sessions promptly, absent a good excuse. It did not become necessary to impose the fine in a single case, but one Senator resigned and three others were excused from attendance on account of serious illness in their families. For this reason, the final vote on the impeachment charges was four short of the full membership of the Senate.

I have read all the leading impeachment cases in the country and in none of them do I find such fine cooperation on the part of the members of the Senate as was exemplified in the Holt trial. Looking after the business aspect of the trial by President W. A. Shands and the floor management by Senator Davis, were excellent.

MY OBSERVATIONS FROM THE HOLT TRIAL

It is contended that the trial of impeachment charges by the Senate is a tedious and difficult proceeding and that an easier and more expeditious method should be substituted.

This contention has generally been made by the law writers and those who have never participated in an impeachment trial. It is true that impeachment is a tedious proceeding, but it is also true that it is a serious matter to prosecute an inquest into one's right to continue in office and to deprive him of it should not be made easy. Having recently spent more than two months in the study and trial of articles of impeachment against Honorable George E. Holt, Circuit Judge, Eleventh Judicial Circuit of Florida, I am convinced that the trial of impeachment charges by the Senate, as provided by the State and Federal Constitutions, is the best way yet devised to determine whether or not a high public official has acted in a way to forfeit public trust and confidence and thus accomplish his removal from office. I am also convinced that on account of issues that arise in such a trial and the incidents that affect them as pointed out in my charge to the Senate in the Holt trial, no better body than the Senate has been found to try such a case. In this I do not contend that the Senate is infallible; it is indeed human and may commit error, but I know of no institution that is more apt to reduce its errors to a minimum. That is the most that can be expected of any human institution.

This is true because the issues involved in an impeachment trial are often more varied, cover more challenges and are more complex than those presented in any other kind of trial under our system of administering justice. In addition to charges of unfaithful conduct such issues may sometimes involve the philosophy and fundamental principles on which our representative democracy rests and could not be comprehended under narrow issues under which other trials are conducted. For this and other reasons, the approach to and trial of an impeachment charge or charges requires a degree of knowledge and experience greater than is essential to the intelligent trial of other cases. The Senate is older, more cosmopolitan and mature and in better position to assess and evaluate the questions that arise in an impeachment trial.

I think the legislature could simplify impeachment trials by legislation defining procedure for filing pleadings and making up the issues prior to date set for the trial. It would also be helpful to spell out as near as can be, offenses that are impeachable under or that are contemplated by "any misdemeanor in office," as prescribed by the Constitution. Other means could be defined to simplify the procedure without transgressing the Constitution.

Preliminary to preparation to try the Holt case, I addressed a letter to every State Attorney General in the United States and asked him to advise me if provisions for impeachment in his state were the same, or substantially so, as those in the Constitution of the United States and, if different, advise me what the differences were.

I have had replies from these gentlemen and all but Oregon and Ohio show that their constitutional law directing impeachment derives from the Federal Constitution, and barring slight variations in a few states, are not materially different from ours It appears from this correspondence that the State of Oregon has no provision for impeachment in the Constitution but that officers charged with incompetence, corruption, malfeasance or delinquencies in office "may be removed in the same manner as criminal offenses." It does not appear that this provision has ever been tested. The State of Ohio has a statutory proceeding for removing public officers which is instituted by filing a complaint setting out the charges against the accused.

Texas has an alternative method for removing judges, except Supreme Court Judges, by the Governor upon address of two-thirds of each House of the Legislature. Alabama's impeachment law is substantially the same as ours, but certain officers may appeal from the judgment of the Senate to the Supreme Court. The law of Nebraska requires that the House and Senate shall have the sole power of impeachment and that all impeachments shall be tried by the Supreme Court unless a justice of that court is impeached. Missouri has the same rule as prescribed in the Federal Constitution except as to the Governor and Justices of the Supreme Court, who are tried before a commission of seven eminent jurists elected by the Senate. The impeachment law in New York is the same as in the Federal Constitution except the Court of Appeals or a majority of them is required to sit with the Senate at the trial. Slight variations exist in other states, but after all is said, the basic law in them, as in our state, stems from the Constitution of the United States.

In its inception, judges and some other officers had tenure based on good behavior. When the officers' behavior ceased to be good, impeachment was in order. That was the only means provided for the state to be relieved of an unfaithful officer. Later with specified terms and regular elections, if the offense was not too bad, removal by election displaced impeachment in some instances. Some states now provide that the time for impeachment extends two years after the officer's term expires.

Objection to impeachment on account of the expense incurred is frequently proffered. On the surface there would seem to be merit to this objection but considered in the light of what is said in paragraphs two and three hereof, I think the objection vanishes. The basic cause of impeachment may be arrogance, corrupt motives, or the fact that the accused becomes so obsessed with the idea that he owns the office that he recognizes no power above him. We need means to impress every office-holder that in a democracy that supreme power resides in the people and to them he owes allegiance. An impeachment, whether successful or not, will do more to bring a recalcitrant officer to his senses than any ordeal I know. It has its effect all up and down the line. History shows that it is required rarely and if it will impress the fact that his allegiance is to the people, I think it is worth all it costs.

Is a Circuit Judge charged with any higher degree of responsibility in the exercise of personal and official duty than a constable, a cab driver or others who are clothed with a lesser degree of responsibility?

This question was suggested by the explanation for their vote recorded by some Senators who voted for acquittal of Judge Holt. Senators who voted guilty and recorded their reasons did so on the ground that Judge Holt's conduct as shown by the evidence had brought his office and the judiciary into scandal and disrepute, while some of the Senators who voted for acquittal thought Judge Holt had been unwise and indiscreet, but did not think his conduct warranted removal from office.

I read a story recently in which one of the leading baseball managers in the country was asked the question: "What are the qualities of personal character and good breeding that you require in your players?" The response was that we want men on our team whose personal life is such that when he walks down the street, any mother can say to her son, "Son, there goes a man whose personal example you would do well to emulate."

A Circuit Judge is one of the most important men in our scheme of democratic society. In his hands rest the welfare, property, life, chattels and maybe the happiness of every one who appears before him in a litigated cause. The future of his family may be wrapped up in said cause and the nature of his ruling may affect unborn generations. Aside from this, there is involved in every such cause elements that set and determine the moral and social standards and the well-being of the community. A Circuit Judge should be one whose moral and professional habits are solid and dependable, whose feet are on the ground, who can be depended upon to be on the right side of every moral issue and whose personal life is such that any mother can commend it to her son.

The judiciary is the last place on earth for the exhibitionist. One of the early craftsmen of the common law is credited with this appropriate nugget of wisdom: "A much talking judge is no well tuned symbol." Talking is only one avenue through which the exhibitionist "pops off." I refrain from reciting the acts, deeds and gyrations that he employs for that purpose, none of which are becoming to a judge, though they might be to a clown. A circuit judge is a marked man; he is a symbol of the law and should be the embodiment of the finest there is in our culture and social structure. His conduct in and out of court, in public places, anywhere and everywhere, should be such as to inspire public confidence. His time and energy is devoted to performance of the most important business the public has to dispense and it is entitled to have it done by those in whom they have the utmost confidence. A judge whose conduct and daily walk is not such as to reflect an exalted sense of justice, good breeding and the best there is in our culture will never inspire that degree of confidence on the part of the public that it is entitled to expect of him.

Even though there be sectors of the public that in personal relations are actuated by low moral impulses when they have legal problems to solve they want to know that the judge who handles them is moved by the most exalted sense of right. So the judge not only sets the standard for correct moral and cultural standards, he influences standards of conduct in other fields. No one in the community has the opportunity that he has to indoctrinate the people in correct democratic thinking. His training and education prepare him to do this and I think he has an obligation to pass it on to the public as opportunity is presented.

Account of these observations I think it may be said that the Circuit Judge is a key man in our form of government. Experience shows that the judge whose personal conduct is at all times judicial is never challenged for unfaithfulness to trust. The public looks to him for correct standards of legal and moral conduct, the bar looks to him as the embodiment of the highest standards and traditions of professional conduct. He has a duty to create a climate in which such standards will become dominant. A dissembler, a sniper or one with the itch for notoriety never helps create such a climate. His example more than any other single influence will make the bar sensitive to its three-fold responsibility—to client, to profession and to country. If he welshes in this, he is not fit to grace the woolsack.

RESPONDENT'S MEMORANDUM BRIEF ON MOTION TO STRIKE AND DISMISS ARTICLE OF IMPEACHMENT

Confined in our labors by brevity of time, novelty of question, and mediocrity of ability, we have striven to expose in this paper, with a minimum of personal comment, the legal issues which probably will be submitted before the court, as well as the recorded precedents of bygone legislative and judicial determinations which seem validly applicable to the issues.

Prepared primarily as a collection of law to serve our own requirements in argument at the bar upon the challenging motion which we shall present for consideration of the court, we shall, nevertheless, be happy to provide copies for distribution among the honorable members of the court, if permitted, or among the honorable managers of the House who oppose us, or any other person connected with the trial who may indicate his desire in the premises.

PREMISE STATED.

History records that every valid impeachment proceeding has involved actual violation of statute law or wilful acts apart from statute which directly related to the official function and which, in their very nature, were dishonest, oppressive, immoral, inherently wrongful, or from evil or corrupt motive or design.

History fails to record that any public officer has ever been put upon trial for an alleged violation of a non-legislative code, standard or rule relating to exemplary official conduct which did not at the same time involve an intentional violation of positive law or an official act which, in its own essence, was wilfully dishonest, oppressive, or immoral or from evil or corrupt motive or design. We make direct reference to the "Code of Ethics" mentioned in specification "f", and impliedly threaded through the other specifications.

Every offense of impeachable nature committed by a judge unquestionably will be found to be in violation of one or more of the codes, standards, statements, or rules of exemplary judicial conduct; but we strenuously protest the premise that for one to neglect or violate a statement of idealistic standards on a particular point of recommended behavior is automatically to commit an impeachable offense under the Constitution, notwithstanding that neither law violation nor wilful immorality, dishonesty, corruption, oppression, or evil motive is even so much as **charged** or **mentioned** as an element of the accusation.

This is a government of laws; and law, not codes or rules lacking sanction of law, must be the criterion governing a penal proceeding of any type. We respectfully assert that it was never intended by the writers of the Constitution or the drafters of the Code themselves that an approved statement of standards, or a guide, rule, or code outlining idealistic and exemplary official behavior should have the dignity or force of law, or in any wise supplement, modify, or repeal **law;** or be enforceable in any court of law, as a substitute for law.

We respectfully contend that the article fails to charge an impeachable offense or "misdemeanor in office" within contemplation of the Constitution of Florida.

I. TRIAL BY RULES OF CRIMINAL PROCEDURE.

A. JEFFERSON'S MANUAL OF PARLIAMENTARY PRACTICE (1850), Judgment p. 117:

> "This trial, though it varies in external ceremony, yet differs not in essentials from criminal prosecutions before inferior courts. The same rules of evidence, the same legal notions of crimes and punishments prevail."

B. 43 Am. Jur. p. 29:

> "Impeachment proceedings are generally begun by articles of impeachment adopted upon inquiry by the house of representatives, which articles are filed with and duly accepted by the Senate. The proceeding is judicial, and the senate sitting as a court of impeachment indicates its judgment by order, as any other court.

"The proceeding is likened to a proceeding by indictment in a court of criminal jurisdiction. It is in its nature highly penal, and is governed by rules of law applicable to criminal prosecutions. The courts have no power to permit amendment of articles of impeachment, nor may amendments be made by managers appointed by the legislature to prosecute the impeachment."

C. **STATE EX REL. ATTORNEY GENERAL V. HASTY, Ala., 63 So. 559:**

" * * * While this extraordinary remedy by impeachment does not prevent an indictment and conviction thereunder, and does not extend beyond a removal from office and a disqualification to hold office under the state, during the term for which the officer was elected or appointed, it is, in its nature, highly penal and is governed by rules of law applicable to criminal prosecutions."

D. **Vol. 8, MISSISSIPPI LAW JOURNAL, p. 294:**

"The proceedings in impeachment are criminal proceedings and are governed by the rules applicable to criminal trials.

"The proceedings, being criminal in their nature, demand proof that excludes every reasonable doubt except that of guilt before a conviction can be had, and after conviction or acquittal of the person he cannot be tried again for the same offense; but he may, by express Constitutional provision, be tried and punished for the crime committed before the regular courts of law. Were it not for this reservation of the power to try before the courts, after conviction or acquittal of the crime in the impeachment proceedings, the provision against being tried twice for the same offense would apply in full force. * * * "

E. **SUPREME COURT ADVISORY OPINION TO GOVERNOR HARRISON REED (Opinion of Chief Justice E. M. Randall), Vol. 12, Fla. Reps., text 675:**

" 'An impeachment before the Lords by the Commons of Great Britain, in Parliament, is a **prosecution** of the already known and established law, and has been frequently put in practice; being a presentment to the most high and supreme court of criminal jurisdiction by the most solemn grand inquest of the whole kingdom.' Blackstone's Com., Chap. XIX, 259; 1 Hale, P. C., 150.

"Rawle on the Constitution, Chap. XXI, says, after quoting the provisions of the Constitution on the subject: 'Impeachments are thus introduced as a known definite term, and we must have recourse to the common law of England for the definition of the term. In England, the practice of impeachments by the House of Commons before the House of Lords has existed from very ancient times. That branch of the Legislature which represents the people, brings the charge before the other branch.' Burrill's Law Dict., title Impeachment, says, to impeach is to exhibit articles of **accusation** against a public officer before a competent tribunal.

"Macaulay, referring to the impeachment of Warren Hastings, says: 'At length the House, having agreed to twenty articles of charge, directed Burke to go before the Lords and to impeach the late Governor-General of high crimes and misdemeanors.'

" 'Under the Constitution and laws of the United States, an impeachment may be described to be a written **accusation**, by the H. of R. to the Senate, against an officer. The mode of proceeding in the institution of an impeachment is as follows:

" 'When a person who may be legally impeached has been guilty, or is supposed to be guilty, of some malversation in office, a resolution is generally brought forward by a member of the House of Representatives, either to accuse the party or for a committee of inquiry. If the committee report adversely to the party accused, they give a statement of the charges, and recommend that he be impeached; when the resolution is adopted by the House, a committee is appointed to impeach the party at the bar of the Senate, and to state that the articles of impeachment will be exhibited in due time, and make good before the Senate and to demand that the Senate take order for the appearance of the party to answer to the impeachment. The House then agree upon the articles of impeachment, and they are presented to the Senate by a committee appointed by the House to prosecute; the Senate then issues process summoning the party to appear at a given day before them to answer the articles.' Bouvier's Law Dict., title Impeachment.

* * *

"It thus appears by ample precedent and authority, that an impeachment is not simply the adoption of a resolution declaring that a party be impeached, but that it is the actual announcement and declaration of impeachment by the House through its committee at the bar of the Senate, to the Senate, that it does thereby impeach the officer accused, which proceeding is at once recognized by the Senate.

"The Assembly of Florida, on the 6th day of November, 1868, upon the declaration of a citizen, that Governor Reed has been guilty of crimes and misdemeanors, immediately 'Resolved, That Harrison Reed, Governor of Florida, be, and HE IS HEREBY, impeached of high crimes and misdemeanors in office.' This was immediately followed, however, by a resolution that a committee of three be appointed to go to the Senate, and at the bar thereof to impeach Governor Reed, and subsequently a committee reported that they had proceeded to the bar of the Senate AND IMPEACHED, as they were directed to do, Harrison Reed, &c.

"And so it clearly appears that the Assembly deemed that an impeachment was not effective until an **accusation** should be actually declared before the Senate, which body alone is authority to entertain it.

"The process of impeachment is likened in the books to the proceedings by indictment in the courts of criminal jurisdiction, and it is unnecessary to say that no indictment is of any effect whatever until it is presented to the court in actual, open, and legal session, and received and filed therein."

F. **ARTICLE 3, SEC. 29, of FLORIDA CONSTITUTION** refers to party **"convicted** or **acquitted".**

G. **Vol. 9, HUGHES FEDERAL PRACTICE, CRIMINAL JURISDICTION AND PROCEDURE, p. 659,** exhibits the following brief statements relating to procedure in impeachment trials:

"Sec. 7273. **General Conduct of Trial.**

"On the day set for the beginning of the trial, the parties being ready, the managers on the part of the House open the **prosecution,** one or more of them delivering an explanatory speech as to the articles of impeachment and the principles of law involved. The proceedings are then conducted substantially as they are upon judicial trials, as to the admission or rejection of testimony, the examination and cross-examination of witnesses, the rules of evidence, and the legal doctrines as to **crimes and misdemeanors.**

"Sec. 7274. **Scope of Prosecution.**

"The managers, in the course of the **prosecution,** must confine themselves to the charges contained in the articles of impeachment.

* * *

"Sec. 7285. **Rules of Evidence.**

"As the rules of evidence in courts of law are the outgrowth of ages of experience as best adapted to elucidate the truth, they are adopted generally in impeachment trials.

"Sec. 7286. **Reasonable Doubt.**

"A reasonable doubt of the respondent's **guilt** should result in his **acquittal."**

II. **THE CONSTITUTION; MISDEMEANOR IN OFFICE.**

SEC. 29, ART. 3 of the FLORIDA CONSTITUTION provides:

"The House of Representatives shall have the sole

power of impeachment; but a vote of two-thirds of all members present shall be required to impeach any officer; and all impeachments shall be tried by the Senate. When sitting for that purpose the senators shall be upon oath or affirmation, and no person shall be convicted without the concurrence of two-thirds, of the Senate present. The Senate may adjourn to a fixed* for the trial of any impeachment, and may sit for the purpose of such trial whether the House of Representatives be in session or not, but the time fixed for such trial shall not be more than six months from the time articles of impeachment shall be preferred by the House of Representatives. The Chief Justice shall preside at all trials by impeachment except in the trial of the Chief Justice, when the Governor shall preside. The Governor, Administrative officers of the Executive Department, Justices of the Supreme Court, and Judges of the Circuit Court shall be liable to impeachment for any misdemeanor in office, but judgment in such cases shall extend only to removal from office and disqualification to hold any office of honor, trust or profit under the State; but the party **convicted** or **acquitted** shall nevertheless be liable to indictment, trial and punishment according to law."

III. **THE SINGLE "ARTICLES" OF IMPEACHMENT IN FULL.**

"BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA:

"Section 1. That George E. Holt, who is a Circuit Judge of the Eleventh Judicial Circuit of Florida, be impeached for misdemeanor in office; that the Articles of Impeachment, which are hereafter set out, be and they are hereby adopted by the House of Representatives and that the same be exhibited to the Senate in words and figures as follows:

ARTICLES OF IMPEACHMENT

"Articles of Impeachment of the House of Representatives of the State of Florida, in the name of themselves, and all of the people of the State of Florida against George E. Holt, who was heretofore elected, duly qualified and commissioned to serve as a Circuit Judge of the Eleventh Judicial Circuit of Florida.

ARTICLE I.

"That said George E. Holt, while holding the office of Circuit Judge for the Eleventh Judicial Circuit of Florida, having been duly elected, qualified and commissioned as such judge and while acting as such judge was guilty of misdemeanor in office in the manner and form as follows, to-wit:

"The reasonable and probable consequences of the actions and conduct of George E. Holt hereunder specified and indicated in this article since he became judge of said court, as an individual, or as said judge, or both, has been such as to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the state judiciary and to render him unfit to continue to serve as such judge, did:

(a) Accept favors from attorneys practicing before his court.

(b) Permit his personal relationships with individuals to unduly and improperly influence his judicial appointments and the allowance of fees to such appointees.

(c) Borrow money from an attorney practicing before his court.

(d) Award excessive and unnecessary fees.

(e) Accept gifts from attorneys practicing before his court.

(f) Flagrantly violate certain provisions of the Code of Ethics governing judges as adopted by the Supreme Court of Florida.

"WHEREFORE, the said George E. Holt was and is guilty of misbehavior and misdemeanor in office.

"Section 2. That in addition to the copy furnished to the Senate of the State of Florida, the Chief Justice of the Supreme Court and Judge George E. Holt also be transmitted a copy of this resolution."

It will be noted that the above article or charge of impeachment alleges no violation of statute law, nor a single wilfully wrong, evil, corrupt, oppressive, immoral, or dishonest act "in office" or tacitly connected therewith; hence no impeachable misdemeanor in office is stated.

It will be further noted that not a single one of the six "specifications" possesses any of the legal characteristics or elements of a true specification in that **not a name of any attorney or appointee is given; not an amount of fee or favor is stated; not a date is designated; no alleged fee, gift or appointee is specified;** and the "certain provisions" of the judicial Code of Ethics charged to have been violated are in no wise made certain or definite, but immediately abandoned upon mere utterance of the unsupported, vague and uninforming declaration of "certain provisions"; nor is it alleged that said "certain provisions" have the force of law in Florida.

Preparation of a defense to such scatter-shot generalities and platitudes by a respondent who has served as judge for sixteen consecutive years in the state's most heavily-populated circuit having some three thousand lawyers would be an utter impossibility.

IV. **RESPONDENT'S CONSTITUTIONAL RIGHT TO BE INFORMED.**

A. **U. S. CONSTITUTION, SIXTH (6th) AMENDMENT:**

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and **to be informed of the nature and cause of the accusation;** to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

B. **FLORIDA CONSTITUTION, DECLARATION OF RIGHTS, SEC. 11:**

"In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, in the county where the crime was committed, and shall be heard by himself, or counsel, or both, **to demand the nature and cause of the accusation against him,** to meet the witnesses against him face to face, and have compulsory process for the attendance of witnesses in his favor, and shall be furnished with a copy of the indictment against him."

V. **INSUFFICIENCY OF THE ARTICLE AS TESTED BY LEGAL PRECEDENT.**

A leading Florida case on a kindred subject, common law indictment, is **SULLIVAN V. LEATHERMAN, Fla. (1950), 48 So. 2d 836,** where the court states:

"To support his contention that count one does not wholly fail to state a common law offense, respondent proceeds on the theory that at common law the sheriff is guilty of a **misdemeanor** if he **fails or neglects to perform his duty.** Within the sheriff's catalog of duties he includes any acts which affect the morals of the community or shock its sense of decency, acts which obstruct the administration of justice or the performance of any service imposed on him by law, any act which tends directly or indirectly to injure the public in a way to require State intervention, failure to perform a ministerial duty, conduct on the part of the sheriff involving corruption or the abuse of any power entrusted to him for the benefit of the public. Respondent says that **a common law indictment may be predicated on anything comprehended in this invoice of duties and that count one is sufficient to do so.**

"In thus contending respondent does not take into

* Apparently the word "day" or "date" was omitted from the text above.

account the fact that our State Constitution, Section 10, Declaration of Rights and Section 28, Article V, F.S.A., and the Federal Constitution, Fifth Amendment, require that any one tried for a capital crime or other felony must be first charged by presentment or indictment of a grand jury. * * * So it follows that if the State relies on an indictment charging **official misconduct** or **failure of official conduct** in any respect, whether common law or statutory, the offense must be charged in **direct and specific terms and that it was wilfully or corruptly done or omitted.** Count one, in fact none of the counts meets the simple academic requirements of precise pleading, **neither do they charge that petitioner wilfully or corruptly failed to perform any duty imposed on him by law or that he acted corruptly in the performance of any duty imposed on him. Ex parte Amos, 94 Fla. 1023, 114 So. 760.**

"So it necessarily follows that when one is relying on a common law indictment, and that is the most that is relied on here, it must meet constitutional and statutory requirements. The charge must be made in such positive and direct terms as will **put the defendant on notice of what he is charged with and enable him to prepare his defense.** In this we do not overlook the requirement that when the statute intercepts the common law, it must be strictly construed, if it is supplementary to the common law it does not displace it any further than is clearly necessary. When all of these safeguards to fair and impartial trial are interposed, we doubt if there is such a thing as a common law indictment in the loose sense that respondent would have it. It would at least be a rare concept. Even if it involved nothing more than a misdemeanor the safeguards to fair and impartial trial must be observed.

"Summarized count one charges that in 1949 and 1950 petitioner was guilty of neglect of duty in office in that he **knowingly** permitted the gambling laws of the State of Florida to be violated in Dade County in an open and notorious manner, on a wide scale, yet he refused or neglected to take any effective steps to prevent said violations. Respondent admits that this count is fatal if tested by State or Federal law, but he contends that it is sufficient as **a common law indictment** for misdemeanor. This notwithstanding it measures up to none of the dimensions for a good indictment prescribed in the preceding paragraphs. Neither could the best lawyer in Florida define from its content **what duty of the sheriff was being corruptly performed.** Respondent also admits that none of the other counts is as strong as count one and he says some of them fail to charge anything. After so much admission it would seem that respondent is now doing little more than officiating at the accouchement of a still born bastard indictment hoping to spank life into it. He admits that it was begotten by an interloper and that its life hangs by a mighty slender thread, but he says that an omnipotent legislature has legitimatized the bastard and remitted the sin of the putative father. He admonishes this court to pronounce its blessing and give it the brush off. **To recognize such an indictment would amount to an abandonment of every safeguard that the constitution and the statute has placed about fair and impartial trial and permit one charged with crime to be tried on charges predicated on nothing more than idle rumor, flying saucers and current gossip. Our constitution does not permit criminal justice to be so administered.**

"* * * So it necessarily follows that when the Founding Fathers made indictments essential to prosecution, **they had no scatter gun pattern in mind, they shot with a rifle directed to the bullseye. A good indictment must still approach that pattern. It cannot be grounded on street rumor, common gossip or what 'they say'."**

See also **STATE V. WHISNANT, Fla. (1955), 80 So. 2d 611,** viz:

"The pertinent part of the information is as follows:

' * * * that * * * Robert Whisnant and Elum Caudell, of the County of Dade and State of Florida between the 10th day of April, A. D. 1952, and the 14th day of April in the year of our Lord, one thousand nine hundred and fifty-two, both dates inclusive, in the County and State aforesaid, did unlawfully and wilfully agree, conspire, combine and confederate to commit an offense against the State of Florida, to-wit: To violate Section 550.35, subsection 1, of the Florida Statutes, Annotated, Transmission of Racing Information; that is to say, the results, changing odds, track conditions, jockey changes, or any other information relating to any horse race from any race track in this State between the period of time beginning one hour prior to the first race of any day and ending thirty minutes after the posting of the official results of each race as to that particular race.'

* * *

"In granting the habeas corpus and discharging petitioners, the trial court held that the **information wholly failed to state any offense against the laws of the state and being so it was wholly void. This court is committed to that doctrine.** State ex rel. Williams vs Coleman, 131 Fla. 892, 180 So. 357; Croft v. State, 106 Fla. 519, 143 So. 599; State ex rel. Tatham v. Coleman, 122 Fla. 819, 166 So. 221; State v. Alred, Fla., 68 So. 2d 894; Section 11, Declaration of Rights, F.S.A. Constitution of Florida, and Amendment VI, Federal Constitution.

* * *

"In the case at bar failure of allegations did not concern technical or matters of common knowledge. **The trial judge considered them such as made it impossible for defendants to prepare their defense.** The place of the crime attempted to be alleged, that is to say the conspiracy, what the conspiracy consisted in, what race track was in the mind of the conspirators, what race or races were involved, what day or days were said races to be run. Certainly enough of these facts should have been set out in the information to charge the conspiracy. **The essential allegations of fact or circumstances as contemplated by the Declaration of Rights is lacking.**

* * *

"The primary difference of counsel in this case is not in the applicable principles of law, but in the application of correct principles to the facts of this case. Section 11, Declaration of Rights, and Amendment VI, Federal Constitution, require that one charged with a crime against the law be confronted with or informed of the nature and cause of the accusation against him. **An information which fails to contain specifications sufficient to do this is fatally defective.** In this case we are driven to the conclusion that the information failed in the allegation of sufficient facts so the decree appealed from must be affirmed."

Following are miscellaneous citations of Florida cases:

(a) (C.C.A. Fla. 1931) Right of accused to be informed of nature and cause of accusation against him, in accordance wth Constitution, is substantial right. F.S.A. Const. Amend. 6.—**GRIMSLEY V. U. S., 50 F. 2d 509.**

(b) (Fla. 1950) A common law indictment must meet constitutional and statutory requirements, and the charge must be made in such positive and direct terms as will put the defendant on notice of what he is charged with and enable him to prepare his defense. F.S.A. Const. Declaration of Rights, Sec. 10; art. 5, Sec. 28; U.S.C.A. Const. Amend. 5.—**SULLIVAN V. LEATHERMAN, 48 So. 2d 836.**

Designation of offense or grade or degree thereof.

(c) (Fla. 1936) Allegation in indictment must be such that accused may not be exposed to substantial danger of new prosecution for same offense.—**PADGETT V. STATE, 170 So. 175, 126, Fla. 57.**

Elements and incidents of offense in general.

(d) (C.C.A. Fla. 1931) Indictment is fatally defective which omits essential element of offense sought to be charged.—**GRIMSLEY V. U. S., 50 F. 2d 509.**

(e) (Fla. 1926) An indictment should allege every necessary element constituting the offense charged, and no such element should be left to inference.—**POTTER V. STATE, 109 So. 91, 91 Fla. 938.**

Matters of presumption or implication.

(f) (Fla. 1918) Where the liberties of a defendant are involved, all the facts necessary to bring the case within the intent of the act must be alleged, as no intendments can be indulged in favor of the indictment. * * *

An indictment must leave nothing to intendment or implication.—**SMITH V. STATE, 78 So. 530, 75 Fla. 468.**

Directness and positiveness.

(g) (Fla. 1950) An indictment charging official misconduct or failure of official conduct in any respect, whether common law or statutory, must charge the offense in direct and specific terms and that it was willfully or corruptly done or omitted. F.S.A., Sec. 905.23; F.S.A. Const. Declaration of Rights, Sec. 10; art. 5, Sec. 28, U.S.C.A. Const. Amend. 5. * * *

A common law indictment must meet constitutional and statutory requirements, and the charge must be made in such positive and direct terms as will put the defendant on notice of what he is charged with and enable him to prepare his defense. F.S.A. Const. Declaration of Rights, Sec. 10; art. 5, Sec. 28; U.S.C.A. Const. Amend. 5.—**SULLIVAN V. LEATHERMAN, 48 So. 2d 836.**

Certainty and particularity.

(h) (C.A. Fla. 1950) In any indictment it is required that the accused be **definitely** informed as to the charges against him so that he may be able to present his defense and so as not to be taken by surprise by evidence offered at the trial and also that the indictment be sufficiently definite and that he shall not be again subjected to another prosecution for the same offense, and if an indictment complies with such requirements it is sufficient. — **WILLIAMS V. U. S., 179 F 2d 656,** affirmed 71 S. Ct. 576, 341 U. S. 97, 95 L. Ed. 774.

(i) Test of sufficiency of indictment is whether it is so vague, inconsistent, and indefinite as to mislead accused and embarrass him in preparing defense or expose him to substantial danger of new prosecution.

(Fla. 1917) **WOLF V. STATE, 73 So. 740, 72 Fla. 572.**

(Fla. 1926) **WILLIAMS V. STATE, 109 So. 805, 92 Fla. 648.**

(Fla. 1926) **LAMB V. STATE, 107 So. 530, 90 Fla. 844,** stay of mandate granted 107 So. 535, 91 Fla. 396.

(j) (Fla. 1934) Affidavit that defendant unlawfully operated motor vehicle on public highways of certain county in careless and reckless manner held insufficient to support conviction as being vague and indefinite.—**ROBINSON V. STATE, 152 So. 717, 113 Fla. 854.**

(k) Charge of felony in indictment or information must be so stated that it will not appear so vague, indistinct, or indefinite as to mislead accused and embarrass him in preparation of defense. F.S.A. Sec. 906.25. — **NEWMAN V. STATE, 156 So. 237, 116 Fla. 98.**

(l) (Fla. 1935) Test of sufficiency of information as to certainty and definiteness is whether language is so vague, inconsistent, and indefinite as to mislead accused and embarrass him in preparation of his defense, or expose him after conviction or acquittal to substantial danger of new prosecution for same offense. — **DIEHL V. STATE, 158 So. 504, 117 Fla. 816.**

(m) (Fla. 1945) Information, charging accused with unlawfully soliciting, requesting, and receiving money on certain day in certain county to be used prior to certain primary election held in certain county to procure votes, contrary to the statute, was fatally defective on ground that information failed to advise accused as to what charge he was required to defend against. * * *

Indictment must state with clearness and certainty all the facts comprised in **definition of offense,** by the rule of common law or statute on which indictment is found, and where such **definition** includes generic terms, it is not sufficient to charge offense in such generic terms, **but indictment must state the species by descending to particulars.—ROSIN V. ANDERSON, 21 So. 2d 143, 155 Fla. 673.**

(n) The right of a person accused of crime to be informed of nature of accusation against him requires that charge be stated with such clearness and necessary certainty as to apprise accused of charge he will be called on to meet at trial.—**COOPER V. CITY OF MIAMI, 36 So. 2d 195, 160 Fla. 656.**

Time of offense.

(o) (Fla. 1912) Every indictment must on its face charge the commission of a criminal offense, and, where time is material, the date alleged must be taken as the true date.—**THORP V. SMITH, 59 So. 193, 64 Fla. 154.**

(p) (Fla. 1922) At common law it is necessary that an indictment allege a definite date upon which the alleged crime was committed.—**STRAUGHTER V. STATE, 92 So. 569, 83 Fla. 683.**

(q) (Fla. 1927) Allegation of date of offense in indictment is one of substance, and not of form.

PICKERON V. STATE, 113 So. 707, 94 Fla. 268.

(r) (Fla. 1931) Indictment must allege time acts were done which constitute crime charged.—**RIMES V. STATE, 133 So. 550, 101 Fla. 1322.**

(s) (Fla. 1934) Indictment must allege time when embezzlement was committed.—**SKIPPER V. STATE, 153 So. 853,** 114 Fla. 312, appeal dismissed 55 S. Ct. 76, 293 U. S. 517, 79 L. Ed. 631.

(t) (D.C. Fla.) To determine sufficiency of an information, **the allegations are to be most strongly construed against the government.—U. S. V. JONES, 108 F. Supp. 266,** cause remanded **73 S. Ct. 759, 345 U. S. 377, 97 L. Ed. 1086,** reversed **207 F. 2d 785.**

Even the lay examiner will instantly perceive that the synthetic accusation at bar not only fails in paucity of language employed and erratic draftsmanship to inform the defendant of the charge or charges he will be called on to meet at trial, and denies to him his right to be informed as to the nature and cause of the accusation within the spirit and intent of the Federal and State Constitutions, but that over and above these considerations, **the alleged article charges no wilful or intentional misconduct or misdemeanor in office, nor a single corrupt, dishonest, wrongful, or immoral act in office.**

In fact, the members of the court, whether of professional or lay classification, will be shocked at the realization that not one or more of the words hereinafter set forth and which are found in every valid accusation, information, indictment or impeachment article anywhere in the country, are completely **absent** from the paper at bar designated "Article," viz:

> Wilful; wilfully; intentional; intentionally; deliberate; deliberately; with design; designedly; unlawful; unlawfully; illegal; illegally; oppressive; oppressively; wrong; wrongful; dishonest; dishonestly; immoral; immorally; fraud; fraudulent; fraudulently; evil; evilly; wicked; wickedly.

Hence, from either or all constitutional approaches, the article utterly fails to measure up to any indictment or accusation charging the most insignificant and minor offense to be found in the statute law of Florida.

Being so completely barren of legal precedent, it becomes evident that the House acted upon mistaken and ill-conceived

concepts as to the proper construction and legal status of the Code of Judicial Ethics which was so repeatedly resorted to on the floor. In result, the membership of the House, or a sufficient number thereof, were persuaded to believe that the said Code of Ethics could be resorted to, used and implanted in impeachment proceedings as a substitute for law and enforced in a court of justice as the law of the land.

We shall undertake to lay bare the complete error of these implications and assumptions at a later point in this memorandum.

VI. INSUFFICIENCY OF ARTICLE AS TESTED BY LEGISLATIVE PRECEDENT.

Etched against the backdrop of impeachment history, the scant and lone article at bar looms as a gnat against an elephant's hide, or as the proverbial molehill against the mountain. Neither quality nor quantity of content is sufficient to render it constitutionally acceptable or even akin to the precise, informative, meticulous, complete and constitutionally satisfactory articles of impeachment found in the archives of history, whether of Federal or State venue, or of ancient or fresh vintage.

Of local interest in Florida (in addition to the Halsted L. Ritter case last discussed herein), articles of impeachment were voted against Governor Harrison Reed, Circuit Judge James T. Magbee, and U. S. District Judge Charles Swayne of the Northern District of Florida. Articles were introduced in the Florida House of Representatives against Governor Fuller Warren in the 1951 session which, although defeated by an almost unanimous vote of the House, are validly examinable for the purpose of comparing and contrasting their carefully-drawn allegations with the legal naught now before the Senate.

Governor Harrison Reed was elected under a Constitution adopted in 1868 and took over the direction of the State from Federal forces on July 4, 1868. He was impeached by carpetbagger influences in the House on February 10, 1872. (See **Florida Assembly Journal of 1872, page 257.**) The articles of impeachment were complete and of expert construction and consisted of twelve lengthy articles which charged divers violations of Constitution and statutes in financial dealings with State funds and bonds, with precise allegations throughout of intent to commit malfeasance, nonfeasance, high crimes and misdemeanors.

Judge James T. Magbee of the Sixth Judicial Circuit was impeached in 1870 upon five carefully prepared articles. When the Senate convened in a Court of Impeachment on January 11, 1871, the House managers (the second set appointed) appeared and moved for dismissal, which was granted. The House had directed its managers to so act a few days previously upon the basis of a "no prosecution" report of a status committee. The committee further reported to the House:

> "The gravest charge contained in said charges is the alleged punishment of Wm. B. Henderson for alleged contempt and they (committee) find upon examination of the proceedings that the act of Judge Magbee is sustained thereby; that at the most, the execution of the power of courts to punish for contempt is in great measure undefined, and being not expressly limited by a statutory enactment, we believe that the execution of a power so undefined and unlimited as shown in this case not to be a proper ground for impeachment. We therefore find it inexpedient to further prosecute." (See **Florida Assembly Journal of 1871, pages 35 to 56.)**

Parenthetically, the above finding is instantly recognized as a sound statement of law applicable in full force to any judicial order entered in equity where a wide range of discretion is invested in the chancellor. Orders appointing receivers and fixing their compensation clearly fall within the discretionary judicial function for which no kind of personal liability can be exacted of the judge **even if wrong.**

Recurring to the main subject, **Judge Charles Swayne** of the U. S. District Court for the Northern District of Florida was tried by the Senate in 1904 upon twelve voluminous articles charging record falsification, fraud, deceit, and other acts of official corruption and misconduct. Although his impeachment had been requested by joint resolution of the Florida Legislature and his shocking conduct had become one of the top scandals of the time, he gained acquittal on each count and returned to his duties.

House Resolution No. 51 of the 1951 session of the Florida Legislature directed against **Governor Fuller Warren** submitted eleven lengthy and carefully prepared articles proposing impeachment which required some forty-six typewritten pages for their exhibition.

At the Federal level, **Judge John Pickering** of the U. S. District Court of New Hampshire was impeached in 1803 upon four expertly drafted articles for scandalous in-office conduct. In fact, the respondent had been insane for three years preceding the charges and had to be disposed of for the good of all concerned. He was convicted in absentia.

In 1804, **Justice Samuel Chase** of the Supreme Court of the United States was impeached upon eight eruditical and carefully framed articles which charged official misdeeds of various types but which, in the main, seemed to revolve around the respondent's predilection to the making of sustained vocal attacks upon the political beliefs and policies of the Republican administration which then was in power. The independence of the judiciary had not, at that day, become established as a principle of popular government, and to root out non-conformers in any and all offices within reach seemed to be a prime policy of the party then in control of the government. However, an almost evenly divided Senate acquitted Judge Chase.

In 1830 **Judge James H. Peck** of the U. S. District Court for the District of Missouri was impeached on one very lengthy article meticulously charging deliberate, wilful and arbitrary oppression and misconduct in summarily attaching and ordering the imprisonment and suspension from legal practice of a lawyer who had appeared before him in a litigated issue and who had incurred the judge's ire in a newspaper tug-of-war. He, too, was acquitted by the Senate.

In 1862, **Judge West H. Humphries** of the U. S. District Court for the District of Tennessee was impeached upon seven lengthy and expertly prepared articles which charged the commission of divers treasonable acts against the Federal Government with which, to put it mildly, Judge Humphries was not at the time in deep sympathy. In fact, upon secession of the Southern states, Judge Humphries promptly deserted his Federal office to organize and become the head of a tribunal named "District Court of the Confederate States of America." Conviction was voted in absentia in a summary manner by an unsympathetic Yankee Senate.

In 1912 **Judge Robert W. Archbald** of the U. S. Court of Commerce sitting in Pennsylvania was impeached by thirteen lengthy articles which charged corrupt and scandalous in-court misconduct of various kinds. In the main, the respondent abused, oppressed and intimidated litigants in his court to secure monetary returns and favors to himself, both directly and under the guise of "investments" of his own evil concoction and planning.

This case presents classic examples of positive judicial misconduct in office which leaves nothing to conjecture or guess work. The respondent was convicted on each of five articles.

In 1926 **Judge George W. English** of the U. S. District Court for the Eastern District of Illinois was impeached upon five voluminous articles which are spread upon the Congressional Record of March 30, 1926, from page 6585 through page 6589. Judge English resigned before trial and the proceedings were dismissed.

In 1933 **Judge Harold Louderback** of the U. S. District Court for the Northern District of California was impeached upon five lengthy and well-pleaded articles charging abusive, corrupt and oppressive misuse of the powers of his office in litigated matters pending in his court. Upon the trial, he was acquitted.

In 1936 **Judge Halsted L. Ritter** of the U. S. District Court for the Southern District of Florida was impeached upon seven carefully prepared articles which charged violation of Federal laws relative to engaging in the practice of law and fraudulent income tax evasions, plus wilfully corrupt misconduct in accepting large sums of money as fees or gratuities.

While acquitted on the first six articles, he was convicted on the seventh and final article.

Since it was stated on the floor of the House that the article

at bar is a verbatim reproduction of the "successful" seventh article in the Ritter case (which we emphatically deny), we take pains to here copy said article, as finally amended, in toto, viz:

ARTICLE VII

"That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the Southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

"The reasonable and probable consequence of the actions or conduct of Halsted L. Ritter, hereunder specified or indicated in this article, since he became judge of said court, as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary, and to render him unfit to serve as such judge:

* * * (Sections 1 and 2 of original Article VII were withdrawn and stricken on prosecution motion prior to answer.)

"3. In that the said Halsted L. Ritter, while such Federal judge, accepted, in addition to $4,500 from his former law partner as alleged in article I hereof, other large fees or gratuities, to wit, $7,500 from J. R. Francis, on or about April 19, 1929, J. R. Francis at this said time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a judge; and on, to wit, the 4th day of April 1929 the said Judge Ritter accepted the sum of $2,000 from Brodek, Raphael and Eisner, representing Mulford Realty Corporation, as its attorneys, through Charles A. Brodek, senior member of said firm and a director of said corporation, as a fee or gratuity, at which time the said Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District Court of which Judge Ritter was a judge from, to wit, February 15, 1929.

"4. By his conduct as detailed in articles I, II, III, and IV hereof, and by his income-tax evasions as set forth in articles V and VI hereof.

"Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office."

It will be instantly gleaned that in the above are to be found precise allegations as to divers amounts of money received; dates of overt acts; and names of donors implicated as to each gratuity or fee wrongfully paid to the judge.

Additionally, under Section 4 above, the article specifically captures and restates four separate violations of Federal laws, including two income-tax frauds which were set out at length in the preceding counts. To examine these antecedent charges, we refer the reader to the Appendix, where the Ritter charges are set out verbatim.

To say that the empty article at bar has the Ritter Seventh Article for its prideful precedent is to say that filthy "Tobacco Road" has for its genesis the Holy Scripture in unabridged form; or that the nothingness of a cigarette paper compares favorably to a Sears Roebuck catalog.

The constitutionally naked article before the Senate stands as an insult to the American concept of constitutional government and fair play and is a mockery of the dignified impeachment procedures of our history.

In closing this section, we observe that interesting and authoritative articles treating with different approaches to the subject of impeachment in both Federal and State jurisdictions are the following:

GEORGETOWN LAW JOURNAL, Vol. 26 (1937-38), p. 849, "Impeachment of Civil Officers";

YALE LAW JOURNAL, Vol. 23 (1913-14), p. 60, "Limitations Upon Impeachment";

HARVARD LAW REVIEW, Vol. 26 (1912-13), p. 684, "The Impeachment of the Federal Judiciary".

Vol. 3, HINDS' PRECEDENTS OF THE HOUSE OF REPRESENTATIVES (1907) authoritatively covers most of the Federal cases. This work is supplemented by **Vol. 6, CANNON'S PRECEDENTS OF THE HOUSE OF REPRESENTATIVES (1936).**

VII. **MISDEMEANOR, MISCONDUCT, MALPRACTICE, ETC., APPLIED TO DISCRETIONARY OFFICIAL ACTS.**

In considering a common law indictment against a state comptroller, the Florida Supreme Court said in **EX PARTE AMOS, Fla. (1927), 112 So. 289:**

"The indictment did not charge the petitioner with 'wilfully' charging, receiving, or collecting any greater fees than he was entitled to charge, receive, or collect by law, but merely alleged that 'Ernest Amos at the time and place aforesaid **did then and there commit the offense of malpractice in office.**' The alleged malpractice is described as consisting, upon the petitioner's part, of a **failure and neglect** to 'perform his duty as comptroller of the State of Florida,' which failure of duty consisted in not taking possession of the property and business of a certain bank and retaining the same in his possession until its affairs were placed in a safe and sound condition, although as comptroller he had reason to believe that the bank was in an 'unsound and unsafe condition.'

"The indictment, which contains three counts, alleges in the second that the malpractice consisted of failure and neglect to summarily remove from office certain named directors of the bank each of whom the petitioner knew had in violation of law, section 4151, Revised General Statutes, obtained for himself and copartnerships and corporations in which he was interested more than 40 per centum of the aggregate capital and surplus of bank.

"The third count contains the same charge as the second with respect to a different bank called the Commercial Bank & Trust Company.

"In neither of these counts is it alleged that the petitioner charged, received, or collected any money or other thing of value in consideration of his alleged failure to act; **nor is there any allegation that he willfully or corruptly neglected or failed** to take possession of the property and business of the bank and retain such possession until the affairs of the bank were placed in safe and sound condition, or to remove the officers and directors who in violation of the provisions of section 4151, Revised General Statutes, had borrowed from the bank more than 40 per centum of its capital and surplus.

* * *

"We do not decide that a constitutional officer, subject to impeachment, may not also be subject to indictment for malfeasance, nonfeasance or misfeasance in office. **The common-law offense, however, must be charged as having been wilfully or corruptly done or omitted.** In the absence of such allegation the indictment in this case merely charges the comptroller with an **error of judgment** in a matter where the complicated and intricate details of a banking business may have misled him to unwise nonaction, but **there is no charge of wilful or corrupt nonaction** upon his part.

"We are therefore of the opinion that the indictment charges no offense against the laws of the state, that he is held in detention for no offense, and that his imprisonment or detention is without authority of law and therefore illegal.

* * *

WHITFIELD, J. (Concurring.)

" * * * The 'malpractice in office' for which punishment as a crime is prescribed in the latter part of section 5354, Revised General Statutes, is not defined in any other statute, and must be determined from the common law in so far as it is in force in this state.

"At common law a public officer is punishable criminally for official conduct that involves **corruption,** and if the official misconduct charged **does not ordinarily involve moral turpitude or like evil intent or purpose, it is essential that it be alleged and proven that the officer corruptly acted or failed to act; and this rule is peculiarly applicable where the official has judicial or quasi judicial discretion in the premises.**

" * * * **Where the act charged as malpractice in office does not involve a moral wrong or an intentional breach or violation of official duty, but is merely a failure to do an official act that the officer could have done or refrained from doing in the exercise of discretion given him by law, such an act is not the malpractice in office that is made a crime by the cited statute. It is not alleged that defendant corruptly acted or failed to act in the matters alleged.**

* * *

"In this case the officer **exercised a discretion** given him by law, and the **information, does not allege acts involving moral turpitude or positive wrongdoing in the breach of official duty** so as to make the matters charged amount to malpractice in office within the meaning of the statute without an allegation of a corrupt intent, so as to charge a criminal offense under the laws of the state. See Throop on Public Officers, 856, 859. See, also, People v. Norton, 7 Barb. (N.Y.) 477; 29 Cyc. 1450; 17 Ency. Pl. & Pr. 254; 23 Am. & Eng. Ency. Law (2d Ed.) 383; State v. Flynn, 119 Mo. App. 712, text 728, 94 S. W. 543; State v. Boyd, 196 Mo. 52, 94 S. W. 536; State v. Powers, 75 N. C. 281."

In **STATE EX REL. HARDIE V. COLEMAN, Fla. (1934), 155 So. 129,** the Florida Supreme Court said:

"Malfeasance has reference to **evil conduct** or an **illegal deed,** the doing of that which one ought not to do, the performance of an act by an officer in his **official capacity** that is **wholly illegal and wrongful,** which he has no right to perform or which he has contracted not to do. 'Words and Phrases, First, Second, Third, and Fourth Series, malfeasance; Webster's New International Dictionary'."

In the recent case of **IN RE. INVESTIGATION OF CIRCUIT JUDGE, Fla. (1957), 93 So. 2d 601** (Holt v. The Florida Bar), the Supreme Court held:

" * * * **As applied to impeachment, 'misdemeanor in office' may include any act, involving moral turpitude** which is contrary to justice, honesty, principles, or good morals, and is performed **by virtue of authority of office. 'Misdemeanor in office'** is synonymous with **misconduct in office** and is broad enough to embrace any **wilful** malfeasance, misfeasance, or nonfeasance **in office.** It may not necessarily imply corruption or criminal intent. 40 C.J., Misconduct, p. 1221; 58 C.J.S., p. 818; Yoe v. Hoffman, 61 Kan. 265, 59 P. 351; Reid v. Superior Court of Trinity County, 44 Cal. App. 349, 186 P. 634; Stanley v. Jones, 197 La. 627, 2 So. 2d 45. In Words and Phrases, citing Yoe v. Hoffman, supra, it was said that the phrase **'Misdemeanor In Office,'** when referring to impeachment should be applied in the parliamentary sense and when so applied it means **misconduct in office.** Something which amounts to a breach of the conditions tacitly annexed to the office, and includes any **wrongful official act** or omission to perform any **official duty."**

In **STATE V. INTERIM REPORT OF GRAND JURY, Fla. (1957), 93 So. 2d 99,** it was held:

"The parties here are not in agreement as to whether the report in question discloses the commission of a crime by the principals. In the brief filed on behalf of the grand jury, **it is stated that the report does not charge the principals with a crime because it does not allege that they wilfully or corruptly performed or failed to perform their duties.** But it at least convicted them — without indictment, without published evidence, without trial, and without due process of law—of wrongdoing little short of a crime, inevitably blackening their reputations and destroying them in their profession. **Such a conviction by a grand jury is not far removed from and is no less repugnant to traditions of fair play than lynch law.** The medieval practice of subjecting a person suspected of crime to the rack and other forms of torture is universally condemned; and we see little difference in subjecting a person to the torture of public condemnation, loss of reputation, and blacklisting in their chosen profession, in the manner here attempted by the grand jury. The person so condemned is just as defenseless as the medieval prisoner and the **victim of the lynch mob;** the injury to him is just as fatal as if he had been charged with and convicted of a crime. As stated in People v. McCabe, 148 Misc. 330, 266 N.Y.S. 363, 367, a case frequently cited in denouncing grand jury reports such as that with which we are here concerned:

'A presentment (report) is a foul blow. It wins the importance of a judicial document; yet it lacks its principal attributes—the right to answer and to appeal. It accuses, but furnishes no forum for denial. No one knows upon what evidence the findings are based. An indictment may be challenged—even defeated. The presentment is immune. It is like the 'hit and run' motorist. Before application can be made to suppress it, it is the subject of public gossip. The damage is done. The injury it may unjustly inflict may never be healed'."

Further on in the same opinion, **the court specifically held that it is not official misconduct for a circuit judge to be wrong** viz:

" * * * If its investigation disclosed that such discretion was exercised wilfully and corruptly, it was its duty to return an indictment against him. See Ex parte Amos, 93 Fla. 5, 112 So. 289. If no such criminal conduct was disclosed, it had no further jurisdiction in the matter.

* * *

" * * * **The decisions** (relating to fees, receivers and curators*) **made by the trial judge were, however, the exercise of a discretionary power vested in him by our organic law and from which no appeal was taken by the interested parties. It is not official misconduct for a judge to make a mistake when operating within the scope of the power vested in him by law."**

The above pronouncement is particularly applicable to any and all equity orders involving court appointees for receiverships, guardianships, curatorships, and the like, and the compensation or fees awarded by the chancellor to those who serve the court in such capacities. These are responsibilities and powers which rest exclusively in the discretionary judgment of the court, subject at all times to question and final review through the appellate procedure afforded by law.

Even though one may disagree with the action of the chancellor in the exercise of his discretionary judgment in such matters, and though many conclude that he erred in his judgment, to repeat the above copied conclusion of the Florida Supreme Court, **"It is not official misconduct for a judge to make a mistake when operating within the scope of the power vested in him by law."**

VIII. **THE NON-JURIDICIAL STATUS OF RULES OF JUDICIAL ETHICS PROMULGATED BY A NATIONAL BAR ASSOCIATION.**

The rules and principles of judicial ethics promulgated by the American Bar Association and later approved by the Supreme Court of Florida on January 27, 1941, **do not have force of law** and cannot therefore be used in a court of law as the basis of allegata or probata in a penal proceeding of whatever gravity.

* (Supplied)

This subject is dealt with because of the implications, gathered from the article itself and floor arguments in the House of Representatives, that the Canons of Judicial Ethics of the Bar Association are to be relied upon and urged upon the Senate as a **substitute for law** in this proceeding in the sense that although the respondent judge admittedly violated no statute law and notwithstanding that no act involving moral turpitude or corruption, immorality or dishonesty is so much as charged against respondent, nevertheless, he is sought to be drummed out of office because of technical oversights or infractions of Association **rules** which have never been enacted or adopted as law by the Legislature.

The ancient Latin maxim "Non verbis sed ipsis rebus, leges imponimus" (We do not impose laws upon words, but upon the things themselves) applies in this instance, in the sense that words of the American Bar Association will not be resorted to, to determine respondent's guilt or innocence of wrongdoing, but that **the act itself** will be examined to determine the existence, vel non, of law violation or an act involving moral turpitude or corruption in office of such gravity as to forfeit the office.

Traced back to its source, it is found that the Canons of Judicial Ethics, so-called, were first devised and written by a special Committee of Judicial Ethics of the American Bar Association headed by the distinguished William Howard Taft, and by said Committee reported to the American Bar Association in the year 1923. (See **9 American Bar Association Journal (1923), p. 449.**) The Bar had previously adopted Canons of Professional Ethics (governing lawyers) in the year 1908, and had decided by the year 1923 to add Judicial Ethics to the program of the non-official Association.

In the next-to-last paragraph of the Taft Committee report, we find the following significant and cogent language:

> "We believe that the Association should supplement the canons of legal ethics adopted in 1908, by **declaring its views** of the spirit and manner in which the judicial office should be administered; and, to do this completely, it is necessary to state many universally recognized principles. In this connection, we note the suggestion made by some critics, that the formal announcement of **these principles** will be inefficacious without a sanction. **The code, however, is not intended to have the force of law;** it is the **statement of standards, announced as a guide and reminder** to the judiciary and for the enlightenment of others, **concerning what the bar expects** from those of its members who assume judicial office."

The Committee report, including the language above copied, was adopted at the 1923 annual meeting of the Association, and hence stands as the statement of the authors of the rules of a complete lack of intent or design that its collection of rules recommended for the guidance of the judicial members of the profession should have the force or effect of law.

This means, of course, that the manufacturers of the rule intended from the outset only to promulgate a statement of high and idealistic standards for the guidance of their members who served, then or later, on the courts of the country, and not otherwise; and that they specifically disclaimed and disavowed any intent to establish rules or principles governing judges as legally enforceable fiats of the American Bar Association. The disclaimer is, of course, in the realm of unnecessary and surplus language since neither the Bar Association, nor any other association or voluntary collection of individuals for that matter, would have legal authority or color of authority to enact principles or rules of law.

To belabor this point further may be a lily-gilding operation, but we do call attention to a recent statement touching upon the situation which was unanimously approved by the Supreme Court of Colorado in 1956 and is reported as **IN RE. HEARINGS CONCERNING CANON 35 OF THE CANONS OF JUDICIAL ETHICS (Colo. 296, P. 2d 465).** This court, like the Supreme Court of Florida, had previously "adopted" or "approved" the Canons of Judicial Ethics of the American Bar Association, but construed its "adoption" to fall far short of any intent to give them the force or effect of law, in the following language:

> "By the 'adoption' or 'approval' of the canons of ethics **the court did not intend to give them the force or effect of law.** 'Adoption' of the canons of ethics by the court **was not** intended to enlarge, or narrow, the field of conduct within which disciplinary actions would be warranted. It was **not** the intention of the court in expressing approval of these ethical standards to give the broad statements therein contained the effect of a 'rule of court' enforceable as such. It **was** the intention of the court to recommend the canons of ethics as a wholesome standard of conduct, as a statement of general principles best calculated to reflect credit upon the profession, to bestow dignity and poise upon the court, and repose confidence and faith in the people concerning the administration of justice. Rules for conduct suggested in those canons which do not recognize the distinction between that which is inherently wrong and inherently right, or that which is basically immoral and basically moral, or that which is fundamentally dishonest and fundamentally honest, **cannot subject any person to disciplinary action because of the existence of the canon unless he was subject to such discipline in the absence of the canon. Although the canons employing language of wide coverage cannot be given the effect of law, they nevertheless are recognized generally as a system or principles of exemplary conduct and good character.**
>
> **"No one could reasonably contend that for each deviation from the broad generalities expressed in the canons of ethics, which recently have been given strained construction or have been used for ulterior purposes, a person departing therefrom should be subjected to discipline or unwarranted publicity when his conduct involves no element of inherent wrong, immorality or dishonesty.**
>
> * * *
>
> "I am confident that our attention at the time of the 'adoption' of the canons was, and now is, to approve them as a **statement of high standards of conduct recommended to the bar and the bench as being best calculated, if substantially adhered to, to command and hold respect for the judicial processes of the land."**

The **January, 1957, issue of the American Bar Association Journal, page 38,** carries a thesis by the Hon. Philbrick McCoy, Chairman of a Special Committee on Canons of Ethics entitled "The Canons of Ethics; a Re-Appraisal by the Organized Bar". According to this article, the entire subject of the canons of Ethics currently is being reappraised, researched and revised for later report to the Association.

This development, in itself, proves the impermanency and possible discontinuance or modification of the present rules, or some of them, and establishes much more firmly and unequivocally than we are able to argue, that the annual change of officers, committee chairmen, and governing factions within the Association may well produce, from time to time, different and varying dogmas of what the Association approves or disapproves in a judge; and hence the "should nots" of today may well become the "shoulds" of tomorrow; and an act condemned by the rules as of this day may have sanction of the rules next year.

There is, of course, no provision of Constitution or statutory law in Florida which gives the effect of law or color of law to any private statement, code, or standard of judicial conduct, however dignified and respected its authorship, or however esteemed its advocacy.

It may not be idle ceremony to conclude this section by drawing attention to the fact that the "misdemeanor in office" provision of the Florida Constitution was adopted in 1868, being some fifty-five years before the rules of the American Bar Association were ever published. For this additional reason, 'misconduct in office" in 1957 is bound to be measured and gauged by the same legal principles, moral formulas, and political concepts that governed the 1868 writings of our forefathers, completely unaffected and uninfluenced by the rules or regulations of the American Bar, the County Bar, the City Bar, or any other non-legislative agency.

CONCLUSION.

We are confident that since the article charges **no** violation of law; **no** act involving moral turpitude or depravity; and **no** official act which is inherently dishonest, immoral, evil, or corrupt, the Senate will regard the article as a legally unsound, unenforceable, unconstitutional and void act, and

enter up an order granting the motion, dismissing the proceeding, and acquitting the respondent.

s/ RICHARD H. HUNT

WM. C. PIERCE

GLENN E. SUMMERS

Of Counsel.

APPENDIX

ARTICLES OF IMPEACHMENT AGAINST HALSTED L. RITTER

House Resolution 422, Seventy-fourth Congress, second session

Congress of the United States of America

IN THE HOUSE OF REPRESENTATIVES, UNITED STATES,

March 2, 1936.

RESOLVED, That Halsted L. Ritter, who is a United States district judge for the southern district of Florida, be impeached for misbehavior and for high crimes and misdemeanors; and that the evidence heretofore taken by the subcommittee of the Committee on the Judiciary of the House of Representatives under House Resolution 163 of the Seventy-third Congress sustains articles of impeachment, which are hereinafter set out; and that the said articles be, and they are hereby, adopted by the House of Representatives, and that the same shall be exhibited to the Senate in the following words and figures, to wit:

Articles of impeachment of the House of Representatives of the United States of America in the name of themselves and of all of the people of the United States of America against Halsted L. Ritter, who was appointed, duly qualified, and commissioned to serve, during good behavior in office, as United States district judge for the southern district of Florida, on February 15, 1929.

ARTICLE I

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of a high crime and misdemeanor in office in manner and form as follows, to wit: On or about October 11, 1929, A. L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge), as solicitor for the plaintiff, filed in the court of the said Judge Ritter a certain foreclosure suit and receivership proceeding, the same being styled "Bert E. Holland and others against Whitehall Building and Operating Company and others" (No. 678-M-Eq.). On or about May 15, 1930, the said Judge Ritter allowed the said Rankin an advance of $2,500 on his fee for his services in said case. On or about July 2, 1930, the said Judge Ritter by letter requested another judge of the United States District Court for the Southern District of Florida, to wit, Hon. Alexander Akerman, to fix and determine the total allowance for the said Rankin for his services in said case for the reason as stated by Judge Ritter in said letter, that the said Rankin had formerly been the law partner of the said Judge Ritter, and he did not feel that he should pass upon the total allowance made said Rankin in that case, and that if Judge Akerman would fix the allowance it would relieve the writer, Judge Ritter, from any embarrassment if thereafter any question should arise as to his, Judge Ritter's favoring said Rankin with an exorbitant fee.

Thereafterward, notwithstanding the said Judge Akerman, in compliance with Judge Ritter's request, allowed the said Rankin a fee of $15,000 for his services in said case, from which sum the said $2,500 theretofore allowed the said Rankin by Judge Ritter as an advance on his fee was deducted, the said Judge Ritter, well knowing that at his request compensation had been fixed by Judge Akerman for the said Rankin's services in said case, and notwithstanding the restraint of propriety expressed in his said letter to Judge Akerman, and ignoring the danger of embarrassment mentioned in said letter, did fix an additional and exorbitant fee for the said Rankin in said case. On or about December 24, 1930, when the final decree in said case was signed, the said Judge Ritter allowed the said Rankin, additional to the total allowance of $15,000 theretofore allowed by Judge Akerman, a fee of $75,000 for his services in said case, out of which allowance the said Judge Ritter directly profited. On the same day, December 24, 1930, the receiver in said case paid the said Rankin, as part of his additional fee, the sum of $25,000 and the said Rankin on the same day privately paid and delivered to the said Judge Ritter the sum of $2,500 in cash; $2,000 of said $2,500 was deposited in bank by Judge Ritter on, to wit, December 29, 1930, the remaining $500 being kept by Judge Ritter and not deposited in bank until, to wit, July 10, 1931. Between the time of such initial payment of said additional fee and April 6, 1931, the said receiver paid said Rankin thereon $5,000. On or about April 6, 1931, the said Rankin received the balance of the said additional fee allowed him by Judge Ritter, said balance amounting to $45,000. Shortly thereafter, on or about April 14, 1931, the said Rankin paid and delivered to the said Judge Ritter, privately, in cash, an additional sum of $2,000. The said Judge Halsted L. Ritter **corruptly and unlawfully accepted and received for his own use and benefit from the said A. L. Rankin the aforesaid sums of money, amounting to $4,500.**

Wherefore the said Judge Halsted L. Ritter was and is guilty of misbehavior and was and is guilty of a high crime and misdemeanor.

ARTICLE II

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

On the 15th day of February 1929 the said Halsted L. Ritter, having been appointed as United States district judge for the southern district of Florida, was duly qualified and commissioned to serve as such during good behavior in office. Immediately prior thereto and for several years the said Halsted L. Ritter had practiced law in said district in partnership with one A. L. Rankin, which partnership was dissolved upon the appointment of said Ritter as said United States district judge.

On the 18th day of July 1928 one Walter S. Richardson was elected trustee in bankruptcy of the Whitehall Building and Operating Company, which company had been adjudicated in said district as a bankrupt, and as such trustee took charge of the assets of said Whitehall Building and Operating Company, which consisted of a hotel property located in Palm Beach in said district. That the said Richardson as such trustee operated said hotel property from the time of his said appointment until its sale on the 3d of January 1929, under the foreclosure of a third mortgage thereon. On the 1st of November and the 13th of December 1929, the said Judge Ritter made orders in said bankruptcy proceedings allowing the said Walter S. Richardson as trustee the sum of $16,500 as compensation for his services as trustee. That before the discharge of said Walter S. Richardson as such trustee, said Richardson, together with said A. L. Rankin, one Ernest Metcalf, one Martin Sweeney, and the said Halsted L. Ritter, entered into an arrangement to secure permission of the holder or holders of at least $50,000 of first-mortgage bonds on said hotel property for the purpose of filing a bill to foreclose the first mortgage on said premises in the court of said Halsted L. Ritter, by which means the said Richardson, Rankin, Metcalf, Sweeney, and Ritter were to continue said property in litigation before said Ritter. On the 30th day of August 1929, the said Walter S. Richardson. in furtherance of said arrangement and understanding, wrote a letter to the said Martin Sweeney, in New York, suggesting the desirability of contacting as many first-mortgage bondholders as possible in order that their cooperation might be secured, directing special attention to Mr. Bert E. Holland, an attorney, whose address was in the Tremont Building in Boston, and who, as cotrustee, was the holder of $50,000 of first-mortgage bonds, the amount of bonds required to institute the contemplated proceedings in Judge Ritter's court.

On October 3, 1929, the said Bert L. Holland, being solicited by the said Sweeney, requested the said Rankin and Metcalf to prepare a complaint to file in said Judge Ritter's court for foreclosure of said first mortgage and the appointment of a receiver. At this time, Judge Ritter was holding court in Brooklyn, New York, and the said Rankin and Richardson

went from West Palm Beach, Florida, to Brooklyn, New York, and called upon said Judge Ritter a short time previous to filing the bill for foreclosure and appointment of a receiver of said hotel property.

On October 10, 1929, and before the filing of said bill for foreclosure and receiver, the said Holland withdrew his authority to said Rankin and Metcalf to file said bill and notified the said Rankin not to file the said bill. Notwithstanding the said instructions to said Rankin not to file said bill, said Rankin, on the 11th day of October, 1929, filed said bill with the clerk of the United States District Court for the Southern District of Florida, but with the specific request to said clerk to lock up the said bill as soon as it was filed and hold until Judge Ritter's return so that there would be no newspaper publicity before the matter was heard by Judge Ritter for the appointment of a receiver, which request on the part of the said Rankin was complied with by the said clerk.

On October 16, 1929, the said Holland telegraphed to the said Rankin, referring to his previous wire requesting him to refrain from filing the bill and insisting that the matter remain in its then status until further instruction was given; and on October 17, 1929, the said Rankin wired to Holland that he would not make an application on his behalf for the appointment of a receiver. On October 28, 1929, a hearing on the complaint and petition for receivership was heard before Judge Halsted L. Ritter at Miami, at which hearing the said Bert E. Holland appeared in person before said Judge Ritter and advised the judge that he wished to withdraw the suit and asked for dismissal of the bill of complaint on the ground that the bill was filed without his authority.

But the said Judge Ritter, fully advised of the facts and circumstances hereinbefore recited, **wrongfully and oppressively exercised the powers of his office to carry into execution said plan and agreement theretofore arrived at, and refused to grant the request of the said Holland and made effective the champertous undertaking** of the said Richardson and Rankin and appointed the said Richardson receiver of the said hotel property, notwithstanding that objection was made to Judge Ritter that said Richardson had been active in fomenting this litigation and was not a proper person to act as receiver.

On October 15, 1929, said Rankin made oath to each of the bills for intervenors which were filed the next day.

On October 16, 1929, bills for intervention in said foreclosure suit were filed by said Rankin and Metcalf in the names of holders of approximately $5,000 of said first-mortgage bonds, which intervenors did not possess the said requisite $50,000 in bonds required by said first mortgage to bring foreclosure proceedings on the part of the bondholders.

The said Rankin and Metcalf appeared as attorneys for complainants and intervenors, and in response to a suggestion of the said Judge Ritter, the said Metcalf withdrew as attorney for complainants and intervenors and said Judge Ritter thereupon appointed said Metcalf as attorney for the said Richardson, the receiver.

And in the further carrying out of said arrangement and understanding, the said Richardson employed the said Martin Sweeney and one Bemis, together with Ed Sweeney, as managers of said property, for which they were paid the sum of $60,000 for the management of said hotel for the two seasons the property remained in the custody of said Richardson as receiver.

On or about the 15th day of May 1930 the said Judge Ritter allowed the said Rankin an advance on his fee of $2,500 for his services in said case.

On or about July 2, 1930, the said Judge Ritter requested Judge Alexander Akerman, also a judge of the United States District Court for the Southern District of Florida, to fix the total allowance for the said Rankin for his services in said case, said request and the reasons therefor being set forth in a letter by the said Judge Ritter, in words and figures as follows, to wit:

July 2, 1930.

Hon. Alexander Akerman,
United States District Judge, Tampa, Fla.

My dear Judge:

In the case of Holland et al. v. Whitehall Building & Operating Co. (No. 678-M-Eq.), pending in my division, my former law partner, Judge A. L. Rankin, of West Palm Beach, has filed a petition for an order allowing compensation for his services on behalf of the plaintiff.

I do not feel that I should pass, under the circumstances, upon the total allowance to be made Judge Rankin in this matter. I did issue an order, which Judge Rankin will exhibit to you, approving an advance of $2,500 on his claim, which was approved by all attorneys.

You will appreciate my position in the matter, and I request you to pass upon the total allowance which should be made Judge Rankin in the premises as an accommodation to me. This will relieve me from any embarrassment hereafter if the question should arise as to my favoring Judge Rankin in this matter by an exorbitant allowance.

Appreciating very much your kindness in this matter, I am,

Yours sincerely,

Halsted L. Ritter.

In compliance with said request the said Judge Akerman allowed the said Rankin $12,500 in addition to the $2,500 theretofore allowed by Judge Ritter, making a total of $15,000 as the fee of the said Rankin in the said case.

But notwithstanding the said request on the part of said Ritter and the compliance by the said Judge Akerman and the reasons for the making of said request by said Judge Ritter of Judge Akerman, the said Judge Ritter, on the 24th day of December 1930, allowed the said Rankin an additional fee of $75,000.

And on the same date when the receiver in said case paid to the said Rankin as a part of said additional fee the sum of $25,000, said Rankin privately paid and delivered to said Judge Ritter out of said $25,000 the sum of $2,500 in cash, $2,000 of which the said Judge Ritter deposited in a bank and $500 of which was put in a tin box and not deposited until the 10th day of July 1931, when it was deposited in a bank with an additional sum of $600.

On or about the 6th day of April 1931, the said Rankin received as a part of the $75,000 additional fee the sum of $45,000, and shortly thereafter, on or before the 14th day of April 1931, the said Rankin paid and delivered to said Judge Ritter, privately and in cash, out of said $45,000 the sum of $2,000.

The said Judge Halsted L. Ritter corruptly and unlawfully accepted and received for his own use and benefit from the said Rankin the aforesaid sums of $2,500 in cash and $2,000 in cash, amounting in all to $4,500.

Of the total allowance made to said A. L. Rankin in said foreclosure suit, amounting in all to $90,000, the following sums were paid out by said Rankin with the knowledge and consent of said Judge Ritter, to wit: to said Walter S. Richardson, the sum of $5,000; to said Metcalf, the sum of $10,000; to Shutts and Bowen, also attorneys for the receiver, the sum of $25,000; and to said Halsted L. Ritter, the sum of $4,500.

In addition to the said sum of $5,000 received by the said Richardson as aforesaid, said Ritter by order in said proceedings allowed said Richardson a fee of $30,000 for services as such receiver.

The said fees allowed by said Judge Ritter to A. L. Rankin (who had been a law partner of said judge immediately before said judge's appointment as judge) as solicitor for the plaintiff in said case were excessive and unwarranted, and **said judge profited personally thereby in that out of the money so allowed said solicitor he received personally, privately, and in cash $4,500 for his own use and benefit.**

While the Whitehall Hotel was being operated in receivership under said proceeding pending in said court (and in which proceeding the receiver in charge of said hotel by appointment of said Judge was allowed large compensation by said judge) the said judge stayed at said hotel from time to time without cost to himself and received free rooms, free meals, and free valet service, and, with the knowledge and consent of said judge, members of his family, including his wife, his son, Thurston Ritter, his daughter, Mrs. M. R. Walker, his secretary, Mrs. Lloyd C. Hooks, and her husband, Lloyd C. Hooks, each likewise on various occasions stayed at said hotel without cost to themselves or to said judge, and

received free rooms, and some or all of them received from said hotel free meals and free valet service; all of which expenses were borne by the said receivership to the loss and damage of the creditors whose interests were involved therein.

The said judge **wilfully** failed and neglected to perform his duty to conserve the assets of the Whitehall Building and Operating Company in receivership in his court, but to the contrary, permitted waste and dissipation of its assets, to the loss and damage of the creditors of said corporation, and **was a party to the waste and dissipation of such assets while under the control of his said court, and personally profited thereby,** in the manner and form hereinabove specifically set out.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of a high crime and misdemeanor in office.

ARTICLE III (As Amend.)

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and while acting as a United States District judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, **was guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated,** title 28, sec. 373) making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that after the employment of the law firm of Ritter and Rankin (which, at the time of the appointment of Halsted L. Ritter to be judge of the United States District Court for the Southern District of Florida, was composed of Halsted L. Ritter and A. L. Rankin) in the case of Trust Company of Georgia and Robert G. Stephens, trustee, against Brazilian Court Building Corporation, and others, numbered 5704, in the Circuit Court of the Fifteenth Judicial Circuit of Florida, and after the fee of $4,000 which had been agreed upon at the outset of said employment had been fully paid to the firm of Ritter and Rankin, and after Halsted L. Ritter had, on, to wit, February 15, 1929, become judge of the United States District Court for the Southern District of Florida, Judge Ritter on, to wit, March 11, 1929, wrote a letter to Charles A. Brodek, of counsel for Mulford Realty Corporation (the client which his former law firm had been representing in said litigation), stating that there had been much extra and unanticipated work in the case, that he was then a Federal Judge; that his partner, A. L. Rankin, would carry through further proceedings in the case, but that he, Judge Ritter, would be consulted about the matter until the case was all closed up; and that "this matter is one among very few which I am assuming to continue my interest in until finally closed up"; and stating specifically in said letter:

"I do not know whether any appeal will be taken in the case or not but, if so, we hope to get Mr. Howard Paschal or some other person as receiver who will be amenable to our directions, and the hotel can be operated at a profit, of course, pending the appeal. We shall demand a very heavy supersedeas bond, which I doubt whether D'Esterre can give"; and further that he was "of course primarily interested in getting some money in the case", and that he thought "$2,000 more by way of attorneys' fees should be allowed"; and asked that he be communicated with direct about the matter, giving his post-office box number. On to wit, March 13, 1929, said Brodek replied favorably, and on March 30, 1929, a check of Brodek, Raphael, and Eisner, a law firm of New York City, representing Mulford Realty Corporation, in which Charles A. Brodek, senior member of the firm of Brodek, Raphael and Eisner, was one of the directors, was drawn, payable to the order of "Honorable Halsted L. Ritter" for $2,000 and which was duly endorsed "Honorable Halsted L. Ritter. H. L. Ritter" and was paid on, to wit, April 4, 1929, and the proceeds thereof were received and appropriated by Judge Ritter to his own individual use and benefit, without advising his said former partner that said $2,000 had been received, without consulting with his former partner thereabout, and without the knowledge or consent of his said former partner, appropriated the entire amount thus solicited and received to the use and benefit of himself, the said Judge Ritter.

At the time said letter was written by Judge Ritter and said $2,000 received by him, Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia, Florida, said holdings being within the territorial jurisdiction of the United States District Court, of which Judge Ritter was a judge from, to wit, February 15, 1929.

After writing said letter of March 11, 1929, Judge Ritter further exercised the profession or employment of counsel or attorney, or engaged in the practice of the law, with relation to said case.

Which acts of said judge were calculated to bring his office into disrepute, **constitute a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373),** and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

ARTICLE IV (As Amend.)

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, was **guilty of a violation of section 258 of the Judicial Code of the United States of America (U.S.C., Annotated, title 28, sec. 373),** making it unlawful for any judge appointed under the authority of the United States to exercise the profession or employment of counsel or attorney, or to be engaged in the practice of the law, in that Judge Ritter did exercise the profession or employment of counsel or attorney, or engage in the practice of law, representing J. R. Francis, with relation to the Boca Raton matter and the segregation and saving of the interest of J. R. Francis therein, or in obtaining a deed or deeds to J. R. Francis from the Spanish River Land Company to certain pieces of realty, and in the Edgewater Ocean Beach Development Company matter for which services the said Judge Ritter received from the said J. R. Francis the sum of $7,500.

Which acts of said judge were calculated to bring his office into disrepute, **constitute a violation of the law** above recited, and constitute a high crime and misdemeanor within the meaning and intent of section 4 of article II of the Constitution of the United States.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

ARTICLE V (As Amend.)

That the said Halsted L. Ritter, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, **was guilty of violation of section 146 (b) of the Revenue Act of 1928,** making it unlawful for any person wilfully to attempt in any manner to evade or defeat the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1929 said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of some $12,000, yet paid no income tax thereon.

Among the fees included in said gross taxable income for 1929 were the extra fee of $2,000 solicited and received by Judge Ritter in the Brazilian Court case as described in article III, and the fee of $7,500 received by Judge Ritter from J. R. Francis.

Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

ARTICLE VI (As Amend.)

That the said Halsted L. Ritter, having been nominated by

the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of a high crime and misdemeanor in office in manner and form as follows, to wit:

That the said Halsted L. Ritter, while such judge, **was guilty of violation of section 146 (b) of the Revenue Act of 1928,** making it unlawful for any person willfully to attempt in any manner to evade or defeat the payment of the income tax levied in and by said Revenue Act of 1928, in that during the year 1930 the said Judge Ritter received gross taxable income—over and above his salary as judge—to the amount of to wit, $5,300, yet failed to report any part thereof in his income-tax return for the year 1930, and paid no income tax thereon.

Two thousand five hundred dollars of said gross taxable income for 1930 was that amount of cash paid Judge Ritter by A. L. Rankin on December 24, 1930, as described in article I.

Wherefore the said Judge Halsted L. Ritter was and is guilty of a high misdemeanor in office.

ARTICLE VII (As Amend.)

That the said Halsted L. Ritter, while holding the office of United States district judge for the southern district of Florida, having been nominated by the President of the United States, confirmed by the Senate of the United States, duly qualified and commissioned, and, while acting as a United States district judge for the southern district of Florida, was and is guilty of misbehavior and of high crimes and misdemeanors in office in manner and form as follows, to wit:

The reasonable and probable consequence of the actions or conduct of Halsted L. Ritter, hereunder specified or indicated in this article, since he became judge of said court, as an individual or as such judge, is to bring his court into scandal and disrepute, to the prejudice of said court and public confidence in the administration of justice therein, and to the prejudice of public respect for and confidence in the Federal judiciary, and to render him unfit to serve as such judge:

1. (Withdrawn and stricken on motion of House managers.)

2. (Withdrawn and stricken on motion of House managers.)

3. In that the said Halsted L. Ritter, while such Federal judge, accepted, in addition to $4,500 from his former law partner as alleged in article I hereof, other large fees or gratuities, to wit, $7,500 from J. R. Francis, on or about April 19, 1929; J. R. Francis at this said time having large property interests within the territorial jurisdiction of the court of which Judge Ritter was a judge; and on, to wit, the 4th day of April 1929 the said Judge Ritter accepted the sum of $2,000 from Brodek, Raphael & Eisner, representing Mulford Realty Corporation, as its attorneys, through Charles A. Brodek, senior member of said firm and a director of said corporation, as a fee or gratuity, at which time the said Mulford Realty Corporation held and owned large interests in Florida real estate and citrus groves, and a large amount of securities of the Olympia Improvement Corporation, which was a company organized to develop and promote Olympia. Fla.. said holdings being within the territorial jurisdiction of the United States district court of which Judge Ritter was a judge from, to wit, February 15, 1929.

4. By his conduct as detailed in articles I, II, III, and IV hereof, and by his income-tax evasions as set forth in articles V and VI hereof.

Wherefore, the said Judge Halsted L. Ritter was and is guilty of misbehavior, and was and is guilty of high crimes and misdemeanors in office.

RICHARD H. HUNT

WM. C. PIERCE

GLENN E. SUMMERS